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CHAPTERS IN TASMANIAN

CONSTITUTIONAL AND

ADMINISTRATIVE HISTORY

1842 - 1856

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PREFACE

The following work lays no claim to be either a complete or a continuous history of Van Diemen's Land between 1842 and 1856, but consists rather of a number of separate studies of the constitutional life of the Colony prior to the establishment of responsible government. The years 1842- 1856 have no exact implication. The dismissal of Montagu seemed a convenient point of departure and the introduction of a bicameral legislature obviously marked the end of a period. However, the first three chapters are more analytical than historical, and it would have been impossible to talk of the functions of the Lieut. Governor without some reference to Colonel Arthur, or to treat of the Old Council without some recognition of the influence of Franklin's character upon it. But it was never the author's intention to traverse again the course so ably covered by West, Fenton, Giblin and, more recently, by Professor Kathleen Fitzpatrick.

What is extraordinary about this period is that within the space of a dozen years almost every conceivable major constitutional conflict arose, - between the Executive and the Legislature, between the Executive and the Judiciary, and indeed between the Legislature and the Judiciary. Unfortunately time has not permitted so far an examination of either the attempt of the Lieut. Governor to "tamper with" the Supreme Court, or the notorious Hampton Case.

But a chapter on the administrative system has been included. Since the researches of Professor Tout students of institutions have had less excuse for neglecting this important field. The third chapter was little more than a preliminary center over this field, but sufficient was seen in passing to encourage longer and more detailed investigation. It can be fairly said that there is hardly one department of the administration that could not form the subject of an interesting and instructive monograph.

Chapter I.

The Lieut. Governor: Functions and Powers

Van Diemen's Land had become a colony at a time when Parliament was increasingly asserting its sovereignty over the colonies. If the Crown used its prerogative powers to control those that had been ceded to Great Britain by treaty at the end of the long European war, Parliament was all the more anxious to extend its own control over the older ones.(1)

Accordingly once it was agreed that New South Wales was a settlement colony Parliament revealed its sovereign powers. An act was passed(2) setting up a Council and a Supreme Court. As if to counter this move the Crown began at once to think in terms of a new and separate colony in Van Diemen's Land. Though the change did not take place during the Governorship of Sir Thomas Brisbane, he was made aware of what was to come. For Brisbane was instructed to consult the Lieut. Governor of Van Diemen's Land before any law was enacted for the benefit of that island. Moreover, for all executive acts the Lieut. Governor henceforth was to be responsible directly to the Secretary of State.(3)

Meantime Colonel George Arthur was being groomed for the new role of Lieut. Governor. He assumed the role when he arrived in Van Diemen's Land on 12th May 1824 and was sworn in two days later. For eighteen months he set about exercising an authority without undue reference to New South Wales, justifying his actions to the

(1) C.H.B.E. VII 286-7

(2) 4 Geo. IV c.96.

(3) Bathurst to Brisbane, 28/8/23.

Secretary of State on the double ground that immediate action was called for and that Brisbane had his own difficulties. In particular did Arthur claim the power to remove executive officers whom he found unfit to perform their duties.(4)

The erection of the colony of Van Diemen's Land was then completed by Order in Council on 14th July 1825.(5) When Lieut.-General Ralph Darling arrived in Australia he carried with him two commissions and two sets of instructions worded in almost identical language. Under these he was entrusted separately with the government of New South Wales and Van Diemen's Land. The territorial jurisdiction of the Governor of Van Diemen's Land was defined to include "all Islands and Territories lying to the Southward of Wilson Promontory in thirty nine degrees and twelve minutes of South latitude, and to the northward of the forty-fifth degree of South latitude, and between the hundred and fortieth and hundred and fiftieth degree of longitude East from Greenwich, and also Macquarie Island"(6)

Darling arrived in Hobart on the 24th November and left on the 6th December 1825 with no intention of returning. In that short interval he was sworn in. He proclaimed the independence of Van Diemen's Land. He constituted a Legislative Council.(7) With his departure local administration passed into the hands of the Lieut. Governor.(8)

(4) Sorell to Bathurst, 24/8/24.

(5) H.R.A. III/IV/104.

(6) H.R.A. III/V/1.

(7) H.R.A. III/V/11.

(8) Arthur's Proclamation. H.R.A. III/V/14.

The Lieut. Governor was therefore vested with prerogative powers, and by the commission of his appointment was charged, as the Chief Executive, with the responsibilities of governing the colony. When the Lieut. Governor appointed or removed an official; or levied a military force; or established a fair or mart; or granted land he did but exercise the ancient prerogative of the Crown.

These different powers were from time to time added to or circumscribed according to changing circumstance. Moreover the authority that sprang from royal prerogative was transmitted in various forms. The powers of the Lieut. Governor, which devolved upon him during the absence of the Governor, were granted by Letters Patent under the Great Seal. On the other hand the instructions to nominate and appoint to the Executive Council were issued under the Royal Sign Manual and Signet. From time to time special authority was given by Order in Council, as when, for instance, the Lieut. Governor was empowered to transport from the colony those convicted of offences committed within it.(9)

But most of these special powers devolved upon the Lieut. Governor from His Majesty's Principal Secretary of State who, in a steady stream of official despatches, instructed the Chief Executive of the Colony on multifarious details of general policy that he was called upon to carry out. How far executive acts within the colony were controlled depended upon the subtle changes in the relations between the Lieut. Governor at that time and the

(9) Grey to Denison, 30/4/48.

Secretary of State, who was responsible for colonial affairs to both his own cabinet colleagues and to Parliament.

Executive powers of this special kind emanating from Whitehall did not all spring from the Colonial Office, though convention ~~is~~ determined that any such powers should be transmitted to the colony through that office. The Admiralty, for instance, found occasion to issue instructions empowering the Lieut. Governor to take measures to implement its ^{ex}ecutive orders, (10) while on matters of financial policy, particularly with reference to the Commissariat, he acted virtually under the instructions of the Commissioners of the Treasury. (11)

If most of these powers were derived from the prerogative, whatever the form in which they were transmitted, statutory authority was by no means negligible, and increased in importance with the impact upon Parliament of Radical thought after 1832. Constitutional enactments which had their origin in the British Parliament, tended to circumscribe those powers vested in the Lieut. Governor which belonged initially to the royal prerogative. The statute of 9 Gee. IV c. 83 (12) provided for the constitution and ~~authority~~ appointment of a Legislative Council empowered to make laws for the "peace, welfare and good government" of the colony. Such laws had to be transmitted by the Lieut. Governor within seven days to the Supreme Court and there, if not repugnant to the laws of England, were enrolled and recorded and after fourteen days were binding until His Majesty's pleasure was known

(10) e.g. Admiralty instructions 24/3/46 and instruction to consuls in matters controlled by Admiralty 30/1/45. (12) 9 Geo. IV c. 83.

It was laid down also in the same statute that the laws of England in general applied to the colony, but where there was a doubt the Lieut. Governor could, with the advice and consent of his Legislative Council, declare how far such laws extended to the colony. The Legislative authority exercised by the Lieut. Governor within the colony itself was dependent upon the good will of members of the Legislative Council, and with each year this good will could be less and less counted upon.

In one other way the powers of the Lieut. Governor, whether statutory or prerogative in origin, were limited in their exercise. For each governor was aware that a maximum limit was set to the duration of his office, and the knowledge of this did not a little to determine how ^{his} ~~their~~ authority was ~~limk~~ ^{limk} wielded. The duration was set at six years until extended to seven by statute. Franklin was reminded of the general regulations on this point. (13) Of course, the rule did not ensure that the Lieut. Governor would run the full length of his term. Wilmot was dismissed, and replaced abruptly after serving little more than three years in the office. Political opponents, however, were apt to take notice of the fact that the Lieut. Governor's term was coming to an end, and to adapt their policy accordingly. For instance, the tactics of T. G. Gregson after 1853 were determined by the knowledge that a successor to Denison was soon to be expected. (14)

(13) Stanley to Franklin 10/2/43.

(14) Gregson's speech in Legislative Council Vol. 2 4/10/53

If the powers of any Chief Executive are to be brought under review, one of the first in importance must always be the power to appoint. For on this power will depend in large measure the ~~initiative~~ initiative he can show in the conduct of policy. The powers of appointment vested in the Lieut. Governor of Van Diemen's Land differed in so far as they related to the Legislative Council, the Executive Council, the Judiciary, the Administrative Departments and lesser officials.

The Lieut. Governors appointments to the Legislative Council were always subject to the confirmation of the Secretary of State. Among the senior officers of the colony the Chief Justice and the Colonial Secretary took their seats ex-officio.(15) In addition, the appointment of the Colonial Treasurer, the Attorney- General, the Chief Police Magistrate was normally sought after and granted. The appointment of the non-official members was sometimes carefully scrutinised in the Colonial Office. For instance, the reputation of T. G. Gregson had got abroad as a result of his activities during the conflict between Arthur and the Press, so that when he was nominated for a seat in the Legislative Council confirmation was granted only after enquiry had been made. Stanley ruled that no Executive Councillor should sit in the Legislative Council as a non-official member. When Franklin wanted to replace the Auditor by the Chief Police Magistrate in the Executive Council and to appoint the former a non-official member of the Legislature, he was

(15) Warrant signed by Bathurst and dated 10/12/26: H.R.A.III/V/455.

refused permission. Two years later Wilmot reminded the Secretary of his own instructions when Bishop Nixon was openly seeking appointment to a seat in the Legislature.(16) On the whole, however, the Lieut. Governor could in practice exercise his discretion and very few of his recommendations were turned down.

On one occasion this power of appointment to the Legislative Council was seriously questioned by the Chief Justice and the Puisne Judge. Shortly before his retirement, Wilmot appointed six Legislative Councillors following the resignation of the "Patriotic Six". Succeeding to the office Denison received instructions which suggested that, if possible, "the six" should be reinstated and their successors be asked to withdraw. Finding it impossible to persuade the latter, Denison announced in the Gazette that Her Majesty had disallowed their appointments. He had received no official intimation that this was so, but he justified his action to the Secretary of State on the ground that he was implementing his instructions.(17) At this stage the Law Officers differed in their interpretation of the Lieut. Governor's powers. For the Attorney and Solicitor Generals advised him that his action was "intra vires". But Chief Justice Pedder argued that the Legislative Council was a statutory ~~body~~ creation and that those appointed to it could not be removed short of a disallowance of their appointments by Her Majesty, and in so far as no ~~xxx~~ disallowance of Wilmot's nominations had been received, Denison's action in re-instating

(16) Stanley to Franklin 8/12/41 & Wilmot to Stanley 17/11/43.
(17) Denison to Grey, 1/4/47.

"the six" was invalid. But the appointment of the first six was not in "the proper and legal form", according to Montague who went so far as to maintain that all twelve appointments were invalid. A search was made but no record could be found of the original appointments, though letters received by the appointees were produced and were found to be in strict accordance with the act.(18) Amid this confusion and uncertainty Denison thought it best to ^dajourn the Legislative Council - the work of which the Chief Justice had already pronounced as illegal - and to await instructions from the Secretary of State, which, as he anticipated, disallowed the earlier appointments and by warrant re-instated "the six".(19) In relation to the Executive Council, the Lieut. Governor's powers were embodied in the instructions sent to Darling with his commission of appointment. In the first instance the Chief Justice and the Colonial Secretary were appointed members ~~in~~ of the Council. Pedder continued to sit until 1835 when it was considered improper for the head of the Judiciary to exercise executive functions. As appointments went not to persons but to holders of offices, little discretionary power was left, except for temporary appointments to make up a quorum.(20)

The power of appointment to the judiciary was jealously preserved by the Home Authorities. The arrival of Chief Justice Pedder in the colony preceeded that of Lieut. Governor Arthur, and he occupied the senior position on the Bench until his

(18) V.D.L. Legislative Council Minutes, 26/7/47.

(19) Denison to Grey, 30/8/47.

(20) H.R.A. I/XII/107: ch. 2.

retirement during the Governorship of Denison. After being some years in the Colony Pedder's appointment was confirmed by warrant. At the time he was the only officer of the colony whose appointment was made in that form.(21) Algernon Montagu's appointment as Puisne Judge was confirmed towards the end of 1833.(22) When the work of the Supreme Court increased, and on the ground that in many cases the Chief Justice and the Puisne Judge had expressed contrary opinions, both Wilmot and Denison sought the appointment of a third judge. In both instances the request was refused.(23) But even with regard to an appointment to the highest judicial office the recommendation of the Lieut. Governor carried considerable weight, especially when he enjoyed the full confidence of the Colonial Office. On the retirement of Pedder, for instance, the office of Chief Justice went not to Judge Horne but to Valentine Fleming, the Attorney General.(24) The Puisne Judge assumed that his claims had been overlooked for political considerations, and soon he vacated the Bench and entered the Legislative Council under the new bi-cameral constitution as member for Hobart Town.

Vacancies to civil offices had to be notified.(25) In conveying this instruction to Arthur, Bathurst differentiated those "higher appointments in the Service" from those not belonging to that class respecting which he was at liberty to exercise his own discretion. The Colonial Secretary occupied the chief executive position under

(21) Grey to Denison 11/1/47 & Denison to Grey 2/8/47.

(22) Arthur to Stanley 25/3/33 & 19/12/33.

(23) Stanley to Wilmot 5/5/45 & Grey to Denison 24/10/48.

(24) Denison to Newcastle 8/8/54.

(25) Bathurst to Arthur, 12/5/1826: H.R.A. III/V/239.

the Lieut. Governor and his duties were laid down quite early.(26) Appointments to this office were normally made in the Colonial Office by way of patronage. Burnett, Bicheno, and Chapman were sent out to act as Colonial Secretaries though they were completely unknown to the Lieut. Governor whom they had to serve. In much the same way the Commissioners of the Treasury used their influence to secure the appointment to the office of Colonial Treasurer of men in whom they had trust. On the other hand, Boyes was appointed to the office of Auditor of Civil Accounts by Arthur, an office which he held to his death in the 1850's. But in this instance Boyes was well known to the Colonial Office and to the Treasury for his work as Deputy Assistant Commissary General. His appointment too had to be confirmed.(27) The office of Attorney General was a "higher appointment" and any appointment made by the Lieut. Governor had to be confirmed accordingly, but his recommendation carried great weight, especially when he acted with the advice of his Executive Council as ^{Arthur} he did when appointing Hone on the suspension of Gellibrand in 1826, though he recommended that some gentleman of established professional reputation should be sent out from England. It was customary to promote the Solicitor General. Fleming was appointed when Horne was raised to the Bench, and when Fleming himself was made Chief Justice Francis Smith received the promotion, though, in the latter instance, the appointment was confirmed as a temporary one only by the Colonial Secretary, who

(26) Bathurst to Arthur 26/5/1826 - H.R.A. III/V/119.

(27) Arthur to Bathurst 2/1/27 - H.R.A. III/V/472.

showed himself anxious to protect the interests of Stonor, during his leave of absence. More troublesome were the appointments to the office of Surveyor-General. On the retirement of Evans, Arthur seriously pushed the claims of Dumaresq, who had accompanied Darling from England. He considered it essential that the Surveyor-General, who was called upon to conduct the survey of the island, "should commence the arduous undertaking without any previous associations or connections".(29) In reply Bathurst stated that he was unable to confirm the appointment of Dumaresq.(30) Already some weeks prior to this acknowledgment he had instructed that Scott should rank next to Evans in the hierarchy^{R/} of the department. At this stage the Lieut. Governor's powers of appointment were revealed in conjunction with those powers of suspension that have yet to be examined. For various enquiries showed that Scott had for years been associated with Evans in work of a dubious character. As a result Arthur, acting on the advice of his Executive Council, suspended the carrying into effect Bathurst's orders, which would have made Scott Surveyor-General.(31) Such procedure was endorsed later by both Goderich and Murray. But if Scott was demoted, Dumaresq did not receive the appointment. Frankland was made Surveyor-General, and Boyd was sent out from England to act as his Assistant.

In making appointments of a lesser kind, such as Justices of the Peace, Coroners and Constables the Lieut. Governor was allowed

(29) Arthur to Bathurst 16/12/25 - H.R.A. III/V/16.

(30) Bathurst to Arthur 18/6/26 - H.R.A. III/V/283.

(31) Executive Council Minutes, ~~xxx~~ 7/2/27 - H.R.A. III/V/541.

considerable latitude, though it was the practice to report to the Secretary of State what had been done. For example, in a dispatch addressed to Gladstone, Wilmot submitted the appointments of John Price to the office of Civil Commandant of Norfolk Island, of Thomas Mason to that of Police Magistrate of Hobart, and of A. Eardley Wilmot to that of the Magistracy of New Norfolk.(32).

But the policy governing the appointments of Police Magistrates was watched carefully from the time when Goderich dropped a word of caution to Arthur, reminding him not so to extend these appointments that he exceeded the monies appropriated for that purpose.(33) Moreover, an appointment within the administrative departments came under the strict supervision of the Secretary of State whenever it involved a promotion, a change in the order of seniority, a modification in salary, or a grant of leave of absence to another official.

Overall it may be said that the Lieut. Governor's power of appointment was severely restricted and discretionary in character, though the exercise of such power depended upon how effectively he could impress the Secretary of State for the time being while working within the limits imposed upon him. In this respect Arthur had less success with Bathurst than with his successors, and Wilmot had the confidence of Stanley and Gladstone to a far less degree than Denison had that of Grey or Pakington.

If the power of appointment affects directly the way in which

(32)Wilmot to Gladstone, 8/7/46.

(33)Goderich to Arthur, 20/8/27 - H.R.A. III/VI/136.

the Chief Executive carries out policy, the power of suspension or dismissal is intimately linked with that power. Failing that power or the judicious use of it discipline declines. On the other hand, too wanton exercise of the power to remove officers from their posts can have such a deadening effect upon the service as a whole, as to kill all qualities of initiative and loyalty and to breed in their place inertia and subservience.

As real changes in the civil administration of the colony dated from the Commission and instructions given to Governor Darling it is not surprising that these gave in some detail the powers of appointment and suspension in relation to the Executive Council. He was commanded "to do and execute all things in due manner". Under this "take care" clause the Lieut. Governor's general power to suspend was exercised, whenever it was considered to be in the interests of the colony. More specifically he was granted "full power and authority to suspend any members of our said Council from sitting, voting or assisting therein".(34)

The relations between the Lieut. Governor and senior officials were discussed following differences between Brisbane and his Colonial Secretary, Goulburn(35), and the position was made clear by Bathurst to Darling when he said that "you will remain exclusively responsible for every act", and that the Colonial Secretary "will have no pretension to control your judgment or to direct your decisions in any particular case".(36) This too defined the position

(34) H.R.A. I/XII/ 100&102.

(35) H.R.A. I/XI/253. (36) No.6 14/7/25 - H.R.A.I/XII/18. The position of the Colonial Secretary and his administrative colleagues to the Lt. Governor was analogous to that of a member of the American Cabinet to the President, not to that of a British cabinet minister to the

of the Colonial Treasurer, the Auditor, the Attorney General and any other senior officer of the executive branch of the government.

In so far as he was held "exclusively responsible" the Lieut.-Governor could reasonably demand loyalty from his senior officers. An officer found guilty of disloyalty to the Chief Executive made himself subject to immediate suspension. When his Attorney-General, Gillibrand was accused by Stephens, the Solicitor General, of acting collusively with Lathrop Murray, editor of the "Colonial Times", in the latter's press attacks on the Government, Arthur appointed a commission of enquiry to report on the matter. The report of the Commissioners was placed before the Executive Council which unanimously recommended that "for the safety of the interests of the Government His Excellency should suspend the Attorney-General until the pleasure of His Majesty can be known". The suspension was confirmed by the Secretary of State.(37)

Equally prominent was the case of John Montagu, who occupied the position of Clerk of the Executive Council for a number of years. He worked harmoniously with his uncle, Sir George Arthur, when he was Lieut. Governor, and was in close touch with him after he left the colony. His close collaboration with Swanston in that gentleman's dealings through the Derwent Bank was not unknown.(38) Trouble arose when, as Colonial Secretary, Montagu committed certain unauthorized acts, which brought him into conflict with Franklin. His loyalty to

(37)Executive Council: Minutes, 1/1/26: H.R.A. III/V/296.

(38)Dallas, K.M. "The Derwent Bank, 1830-1855": paper read at Hobart meeting of A.N.Z.A.A.S.(1949).

the Lieut. Governor was seriously doubted by Boyes, the Auditor, who found him non-co-operative.(39) The differences lead the Colonial Secretary to confine his attention to the routine of his office until relations between him and his chief became unbearable. A letter addressed by Montagu to Franklin, dated 17th January 1842, attributed the recent conduct of the Lieut. Governor to either imbecility or falsehood. It lead immediately to Montagu's dismissal. Repercussions followed Montagu's return to England, where he stated his case to the Secretary of State. Stanley heard him favorably, ordered his salary to be paid from the date of his dismissal and even considered sending him back to his post. In short, the Secretary of State virtually condemned Franklin.(40)

Different from this personal disloyalty, yet linked with it in that it gave rise to similar ~~circumstances~~ consequences, is that sort of difference on major political questions that prevented the continuance of real confidence between the Lieut. Governor and one or other of his senior officers. Before responsible government could be established the principle of collective ~~responsibility~~ responsibility within the council of the government had to be understood and tested in practice. It was obvious that no Lieut. Governor could work for long through an Exective Council, the official members of which publicly declared their opposition to acts of policy endorsed by that Council.

(39) Boyes' Diary (unpub.) 21/1/42.

(40) West:History of Tasmania, p. vi. p 226-7

When therefore H. S. Chapman, the Colonial Secretary, who had only recently been sent out from England to assume that appointment, and Adam Turnbull, who had occupied several senior appointments from Arthur's day and was at that time Clerk of the Executive Council, expressed their opposition to the policy of transportation and their reluctance to voting in the Legislative Council against a motion condemning it, Denison interpreted their action as both dishonest and improper. (41) Chapman, who had left the Council to avoid voting, was not removed at once. Owing to the lateness of the session and the need to complete legislative business Denison decided to keep him on in his position, and then to remove him in a manner which would not leave him destitute in a distant colony. But Turnbull had voted for the motion, and for this political apostasy Denison proceeded through the Executive Council to have him suspended. (42) Through-out all this Denison acted on the ~~principle~~ principle "that an officer holding a seat in the Legislative Council whether as an official or as the representative of a constituency, is bound to support the measures of Government." (43)

Pakington later endorsed the Lieut. Governor's action with regard to Chapman, condemning his lack of moral courage, but he commanded the re-instatement of Turnbull, who had fought his case ^{to the Land Board} vigourously in memorials and at the bar of the Legislative Council, on the ground that the nature of his appointment did not bind him to support the government policy. (44)

(41) Denison to Pakington, 22/10/52: 23/10/52.

(42) Executive Council: Minutes, 27&28/9/52.

(43) V.D.L. Legislative Council Votes, 1853: Vol 3, Paper No. 41.

(44) vide ch. 8.5

As Denison held the view that it was the duty of a Legislative Councillor, whether official or elected, to support the government, it is not surprising that he came into conflict with those members known as the "Patriotic Six" in the old Council. The conflict had constitutional importance in that it raised the question of the Lieut. Governor's power to dismiss a member of the Legislature, Wilmot had trouble with these unofficial members when they stubbornly refused to pass the annual estimates. When Denison met the same opposition in trying to get the Council to indemnify unauthorized expenditure, he sought the advice and support of the Secretary of State. He argued that, as the Queen's government must be carried on, those Councillors who failed to advise and support the government should be removed and replaced. This argument, which no doubt expressed the opinion of two law officers of the government, was dissented from by Chief Justice Pedder, who so interpreted the statute 9 Geo.IV c.83 that the Lieut. Governor was not empowered to dismiss a member of the Council and in doing so would be "adopting a course knowingly contrary to the provisions of the constitutional act". He argued that the only way in which a member could be removed was by Her Majesty's appointment of another in his stead by warrant under the Sign Manual and Signet. In reporting these dissenting views to Grey Denison recalled a number of precedents, particularly those of 1833 and 1846, by which it was established that the Lieut. Governor had the right to expect that the Legislative Council would indemnify certain unauthorized expenditure that had been made necessary. Finally Grey authorized

Denison to dismiss those members who opposed the bill of indemnification, if he had to, but to avoid doing so, if possible. A critical stage in this controversy was not reached. For Swanston, O'Connor, Kermode, part of this "opposition", themselves resigned their seats, which were filled by the Lieut. Governor, thereby ensuring that the government could be carried on.(45)

The power to remove a senior official guilty of malfeasance in office was exercised in a number of instances. Probably the most striking of these were in the time of Arthur, who inherited a civil administration, in which corrupt practice was anything but unknown. A real scandal was exposed when Boyes, the Auditor, on instructions from Arthur investigated the accounts and found that Jocelyn Thomas, the Colonial Treasurer, was in the habit of making "improper use of public money". Found thus guilty of defalcation, Thomas was immediately suspended by Arthur, and his action was subsequently confirmed by the Secretary of State. The investigation revealed also that O'Ferrall, the Collector of Customs, was guilty not only of gross inefficiency but of malpractice. He too was removed.(46)

Equally striking was the removal of Judge Montagu for misbehaviour. In coming into conflict with the judiciary Denison showed unusual courage, though, as will be seen, he went occasionally too far and put himself in the wrong. Montagu's particular misbehaviour consisted in his refusal to allow one of his creditors to proceed for recovery of debt. The Lieut. governor suspended him from the exercise

(45) Denison to Grey 30/8/47, 3/7/48, 15/9/48; Grey to Denison, confid. 30/1/49; Denison to Grey, confid. 16/7/49. Also vide Ch. 54

(46) Arthur to Goderich, 3/11/32. Hobart Gov. Desp. 12/71; Stanley to Arthur, 13/3/33, 27/6/33, 30/8/33.

of his office on the advice of his Executive Council. As Montagu sought permission to appeal to the Judicial Committee of the Privy Council, the Secretary of State informed the Lieut. Governor that he was not, in the circumstances, in a position yet to confirm the action. However, Horne continued to act as Puisne Judge.(47)

Less successful was Denison's move to have suspended the Chief Justice. Some embarrassment had been caused to the government by the judges' interpretation of the statute 9 Geo.IV c.83, and this was increased when they declared invalid certain acts passed by the Legislative Council and approved by Her Majesty. The consequence of this ruling of Pedder's was the refusal of certain citizens to pay dog licences, customs duties, and the licences of public houses. There was a move in the Executive Council to get Pedder "to take a holiday", but on his refusing to do this, the Council investigated the possibilities of suspending him from office. Nothing came of it, but on reading the minutes of the Executive Council, Grey thought it fitting to give Denison a sharp reprimand for his tampering with the Supreme Court.(48)

One more instance of the exercise of the Lieut. Governor's power of suspension and removal may be mentioned, and one involving a matter of departmental control. Being unsatisfied with the administration of the Marine Department under Mclean, the Deputy Commissary General, Denison relieved him of the control of that department, which was placed under civil officers employed by the

(47) Denison to Grey 17/1/48, 14/2/48; Grey to Denison 30/6/48.

(48) Denison to Grey, 18/2/48.

colonial government and therefore under his own direct supervision. His action was not confirmed by the Secretary of State, who ordered a return to the status quo.(49)

The general instructions sent to the Lieut. Governor made him responsible for carrying into execution the policy with regard to transported convicts. His authority was embodied in what may be called the 'take care' clause. The expression of this authority was given constantly in response to specific instructions sent out by the Secretary of State. The Lieut. Governor on assuming his office was usually referred to a whole series of instructions relating to convict discipline despatched to his predecessors.

When Denison received the warrant appointing him Lieut. Governor it was accompanied by a dispatch from Grey, reminding him that "the great interests thus confided to your care have become the subject of no common solicitude." Moreover, he made it plain that this care and solicitude applied specially to some thirty thousand transported convicts, who made up half the population. Grey then thought fit to summarise the policy as it then stood. He explained the stages through which a convict passed in the process of penal reform; as a member of a probation gang, subjected to compulsory labour; as a passholder able to hire himself out, but still subject to restraint; as a ticket of leave man able to move about and even own property; until eventually qualified for a conditional or perhaps a free pardon.(50) The change of policy from the assignment system of Arthur's day to the probation

(49) Denison to Grey, 27/12/48.

(50) Grey to Denison, 30/9/46.

system of Wilmot's day was effected under great handicaps and fully tested the Lieut. Governor's authority and resourcefulness. For failing to carry out effectively this policy was the public reason given for Wilmot's dismissal.(51)

It was belatedly recognised at the Colonial Office that the Lieut. Governor of Van Diemen's Land had not at his command the resources to put into effect the "Stanley system" and without such resources mere authority was without avail. For there was a lack of sufficient trained overseers to maintain discipline in the convict gangs, accomodation was so inadequate as to create disturbing moral problems affecting the whole colony, and amid the economic depression of the 1840's there was a disinclination on the part of settlers to hire convict labour, thus giving rise to unemployment and its attendant evils. If these evils in themselves were not sufficient to test the authority of the Lieut. Governor, his efforts to exert that authority and carry out the policy were paralysed by the financial stringency to which he was subjected by the Home Government.(52)

The Lieut. Governor supervised the work of the Convict Department through the person of the Comptroller-General, who reported to him regularly on the working of the probation system. These reports were forwarded with comment to the Secretary of State.

The cost of carrying out the transportation policy, including the maintenance of troops in the island, was borne by the British

(51) Gladstone to Wilmot, 30/4/46.

(52) vide ch. 4.

Treasury, which worked through its officer in Van Diemen's Land, the Deputy Commissary General. Debts incurred were charged to the Commissariat Chest and were met by Treasury bills. Though the Deputy Commissary General was responsible directly to the Treasury, he had by necessity to work under the general superintendence of the Lieut. Governor, who in a dual capacity watched over the relations between the Colonial Government and the Commissariat. A claim for reciprocity in the matter of postage rates was referred to the Lieut. Governor, following complaints made by McLean, Deputy Commissary General to Bicheno, Colonial Secretary. Both McLean and Bicheno laid claims to the lands of ticket of leave men who died in possession. If the cost of rations given to ticket of leave men was charged to the Commissariat, the cost of hired convict labour and materials for public works was charged to the colony, and periodically there had to be a settlement of claims, which was not always effected without some delay and wrangling.(53) In all this the Deputy Commissary General kept the Lieut. Governor informed through the person of the Colonial Secretary.

The Lieut. Governor had the power to grant pardons and reprieves except in cases of murder. It was one of his normal duties to recommend for conditional pardons or tickets of leave convicts who respectively had served their sentences, or completed satisfactorily their probation, but in every case the recommendation had to be confirmed. From time to time, as in the case of Loveless, Lieut.

(53) Deputy Commissary General to Colonial Secretary 20/8/49, and reply 23/8/49. Colonial Secretary to Auditor 26/8/49.

^{Governor}
General and Secretary of State worked together to make out a special case.(54)

The penal nature of the colony called for a military force, which increased as more convicts were sent to Van Diemen's Land and less to New South Wales. The relation of the Chief Executive to these military forces in the two colonies was indicated in the commission sent to Darling on his appointment in 1825. The general powers and duties outlined therein were assigned also to the Lieut. Governor. These included "full power and authority to levy, arm, muster, command and employ all persons and as occasion shall serve to march them from one place to another, and to embark them for the resisting all enemies". The Lieut. Governor was also empowered to declare and execute martial law at the time of invasion, and, with the advice and consent of ~~the~~ his Executive Council, to erect fortifications.(55).

The distribution of military forces between the two colonies devolved upon the General Officer Commanding in the Australian Colonies. When the decision was taken on the cessation of transportation to New South Wales to transfer the main body of troops to Van Diemen's Land and to move the headquarters from Sydney to Hobart, Lieut. General O'Connell was instructed to consult the Governor and the Lieut. Governor before determining the allocation of troops. But Stanley told Wilmot that it devolved upon him having consulted the Governor of New South Wales, "to regulate the

(54) Stanley to Arthur, 8/7/35.

(55) H.R.A. I/XII/103.

distribution of the Engineer Department with reference to the present and future wants of the Convict Establishments in both colonies."(56)

The Officer Commanding in Van Diemen's Land had his headquarters at the Barracks in Hobart Town. Notification of his appointment, or of that of the Brigade Major, was made in a general General Order of the Assistant Military Secretary to the General Officer Commanding in the Australian Colonies, who was stationed in Sydney. The Brigade Major informed the Lieut. Governor through the person of the Colonial Secretary.(57)

It is not surprising that of all the early Lieut. Governors Arthur and Denison took their Military duties most seriously. To cope with these duties Arthur secured the appointment in turn of an Aide-de-camp, a Brigade Major, who dealt with the correspondence to and from the Officer Commanding, and a Barracks Master. He supervised the division of the island into military districts, and half yearly he inspected the regiment and its detachments and sent a confidential report to the Governor.(58) In his day Denison showed great interest in the work of the Royal Engineers. Both men maintained close social relations with the senior military officers, and were as much at home in the Officers' Mess as in Government House.

However correspondence between Government House and the Barracks did not always take place without a hitch even in Denison's time.

For, instance, when the Quartermaster complained that bad water was

(56) Stanley to Wilmot 7/12/43: and attached correspondence between the Secretary of State, the Lords Commissioners of the Treasury & the Ordnance Board, especially the recommendation by Jas. Stephen to C.E. Trevelyan (Treasury) of 9/11/43 that the distribution should be left to the civil and military authorities in the colonies.

being given to the troops and the Brigade Major informed the Colonial Secretary of it, the latter replied that it was a matter outside his province. For the arrangements governing the Waterworks had been decided by the Legislative Council. On another occasion the Brigade Major reported that, as accommodation could not be found for the Officer Commanding at Launceston, consideration would be given to the reduction of the military strength there to a sergeant's detachment. The Colonial Secretary said that the Colonel Commanding had no right to call upon the Civil Authorities to provide accommodation, and Denison's marginal comment was, "We cannot reduce the detachment at present, and therefore Ordnance must provide quarters".(59)

The Officer Commanding was one of the five members of the Executive Council. It was with the advice and consent of this Council that the Lieut. Governor took any step to establish fortifications. Accordingly in the early months of 1854, when rumours of war were in the air, Denison presented a long memorandum to the Council on the subject of the defences of the colony. In this he suggested the erection of a number of batteries, the establishment of a signal station, and the raising and training of three companies of artillerymen, two in Hobart and one in Launceston. Further than this he did not think it necessary to go despite fears expressed in the Legislature, and his plans were endorsed by the other members of the Executive Council.

(59) Brigade Major (Ainsworth) to Colonial Secretary (Champ) 12/1/54.

By no means the least important of the Lieut. Governor's duties was concerned with the ecclesiastical establishment. This establishment had by Denison's time and grown to a point that the estimates for 1851 included an item of £14,975 to meet the cost of maintaining it. This comprised slightly more than one tenth of the annual estimates for the whole civil establishment. Even so, Denison informed Grey that it was likely to grow further, and that consideration should be given to some plan whereby the churches could be severally endowed and thereby relieve the colonial revenue. Besides under the existing system "the clergyman sinks into a mere stipendiary of the state".(60)

The relations of Church and state, which formed the subject of much controversy at this time in England and Scotland, gave rise to serious differences between the authorities in the colony. The churches did not occupy analogous positions to those held at home. They had not the benefits of old endowments. The cost of maintaining colonial chaplains had therefore to be met from the colonial revenue. Still less independent were those instructors who were sent out under appointment to do missionary work within the convict department. They were paid out of the Commissariat Chest, and their appointments were at the Queen's pleasure. They were, according to Bishop Nixon, "civil servants".

Differences arose over the appointment of chaplains, and these were aggravated by a growing personal animosity felt for each other

by Wilmot and Nixon. The Bishop complained of undue interference with his ecclesiastical jurisdiction. He refused to ordain certain instructors appointed to serve within the convict department, maintaining that he could not admit to holy orders nor grant a licence to men whom he did not know. In this conflict the Secretary of State gave the Lieut. Governor his full support, while trying to heal the breach and settle the differences by private ~~correspondence~~ communication with the Archbishop of Canterbury. Stanley referred to "the absolute necessity for investing the local government with such authority over the religious instructors as shall secure a proper attention to the rules prescribed for convict discipline", and laid down that "the appointment of these instructors should rest with yourself", together with "the absolute right of dismissing them for improper conduct". At the same time Stanley thought it would be well for the Lieut. Governor to defer to the Bishop in spiritual matters, to inform him when a chaplain was removed, and, if possible, to get him to revoke the license. He urged upon Wilmot the importance of harmony between the two authorities and "the necessity of not enquiring too narrowly into the ~~gratious~~ precise limits of your respective authority, still less of seeking to strain that authority".(61)

But Nixon's nature was such that he could not rest content until he received assurances concerning his own legal status and authority, and to secure this end he left for England, where,

(61) Stanley to Wilmot, 30/6/45, 28/7/45 & 17/9/45.

according to some reports, he acted as Gladstone's informant against Wilmet. While in England Nixon made a long investigation into the jurisdiction and powers of the Diocesan Bishop of Van Diemen's Land, which brought him into close correspondence with Grey, the new Secretary of State. Grey made friendly overtures and made a distinction between the colonial and the missionary chaplains, but Nixon, in uncompromising mood, drew attention to a decision given by the Crown lawyers in December 1845, "that upon the appointment of a chaplain to officiate in Van Diemen's Land whether by the government here or in the colony, he cannot lawfully act without being licensed by the Bishop of Tasmania; that upon refusal by the Bishop to license an appeal lies to the Archbishop of Canterbury and to him only".(62) The correspondence continued over some weeks until the Secretary of State somewhat wearily gave a mere formal acknowledgment of the Bishop's last letter. He then addressed himself to Denison in these words, "It is my desire to leave to the Bishop the power of distributing the colonial chaplains according to his discretion. At the same time the distribution of the convict chaplains will rest with the Lieut. Governor."(63)

When Nixon returned to the colony he found in Denison a good churchman. The Lieut. Governor was firm and conciliatory, and moreover sufficiently aware of the problems that were confronting the churches to make strong recommendation to the Secretary of State

(62) Grey to Nixon, 1/11/47: Nixon to Grey, 11/11/47.

(63) Grey to Denison, 16/12/47.

for a system of endowment. For instance, he made arrangements for four hundred acres of glebe to be attached permanently to the Church of England in Hobart, Launceston and Longford. In supporting the Anglican he antagonised the Presbyterian leaders who complained that the government was alienating Crown land for the erection of a private school (Hutchin's) under the control of the Church of England. On the subject of appointing convict chaplains he said, "I should think it my duty to consult your Lordship," and he was in favour of paying chaplains dismissed by the civil power their passage back to England and half salary to the day of embarkation. But he stubbornly refused to compromise on the question of his power to dismiss for a cause involving discipline in the probation gangs. (64)

One of the most responsible and not the least vexing of the Lieut. Governor's duties was concerned with the granting and leasing of Crown lands. When Bathurst issued instructions to Brisbane in 1825 many land grants had been made in both New South Wales and Van Diemen's Land, and, as Arthur pointed out, little enough care had been exercised to reserve to the Crown lands that were necessary for public roads and other internal communications; for the uses of churches, schools and burial grounds; for quays and landing places (65)

The Lieut. Governor was empowered to divide the territory into counties, hundreds and parishes; to issue a commission under the great seal of the colony for a survey and valuation of land; and to reserve lands for public uses. When the land had been valued, the

(64) Denison to Nixon, 13/6/48; Denison to Grey, 12/2/49.

'Examiner', 8/9/47 for John Lillie's letter.

(65) Bathurst to Brisbane, 30/6/25. H.R.A. I/XI/434.

upset prices had to be published, and no offer of purchase was to be rejected "except on clear and weighty reasons". At all times he was made responsible, through the person of his Surveyor General for assessing the fitness of any person to take up land on lease. He had to be satisfied as to the ability and intention of the applicant to expend in the cultivation of the land a sum equal to one quarter of the valued price, and at the expiry of seven years after the grant was made he was expected to make sure that the terms had been fulfilled. The quit rent for such lands had to be paid into the Land Fund.

Difficulties arose during the depression of the 1840's. The land fund receipts which more than doubled from 1836 to 1841 declined to almost one fifth of those of the peak year by 1845.(66) A similar rise and decline was noticeable in the statistics of land surveyed. Amid his many financial difficulties Wilmot found it hard, if not impossible, to get many settlers to meet their quit rents, and the Crown lawyers were doubtful concerning the extent of his powers to resume land for the Crown. They informed the Lieut. Governor that any action of recovery would be defeated by the refusal of any jury, considering the temper of the colony, to bring in a verdict in favour of the Crown. The Attorney-General of the colony suggested a land tax to be imposed by an Imperial Act, but to this the Secretary of State refused to consent. At the same time he strongly deprecated "an unconditional surrender of quit rents without commutation", though

(66) Figures quoted by Calder in a letter to Hobart Town Advertiser xxx10/2/57 were:-

	No. of acres	Amt. received.
1842	39,000	£658
1846	337,000	£5,549
1849	1,336,000	£16,914

he did not mind a commutation on terms advantageous to the landholder. However the working out of a just plan of commutation depended so much upon the circumstances in the colony and was complicated by "the different rates of quit rent established by different sets of regulations" that he was content to leave it to the discretion of the Lieut. Governor.(67)

When the 'Stanley system' was set up, it had been hoped that the landowners would help to make it succeed by hiring convict labour for the development of their lands. These hopes were not realised, land sales fell off and the land revenue declined. Apart from the economic depression ⁱⁿ Calder, who was then/the Surveyor General's department, found other causes for this "most unfairly low revenue". He said that waste lands were not properly surveyed, and graziers were not restricting themselves to the ground for which they paid rent. Another defect lay in the method by which Crown lands were disposed of. Public auction was less fair than it appeared, for it gave rise to "combinations not to ~~buy~~ purchase rather than fair competition". The prospective buyer, who had gone to much trouble and expense to locate a piece of land, found himself outbid by the "trafficking speculator" or by those who deliberately ran up the price to keep off buyers.(68)

Calder maintained later that he advised Power, the Surveyor-General, of these points and recommended changes in the regulations, but that Power deliberately failed to pass on his letter to the

(67) Willmot to Stanley, 11/2/46; 13/2/46; 2/4/46; and Grey to Denison, 25/11/46.

(68) Calder's letters pub. H.T.A. 10& 12/2/57.

Lieut. Governor. Some of these recommendations were ultimately embodied in the new regulations. Certainly Denison received fresh instructions from Grey early in 1848, and the Surveyor-General was asked to re-draft the regulations to comprehend all previous instructions and to bring them into line with the Statute⁸&9 Vic.c90 (69). But only after certain sections had been amended according to the desire of the Executive Council was the new draft approved and the regulations gazetted.(70)

In all matters of legislation the initiative lay in general with the Lieut. Governor, who merely transmitted drafts of bills to the Council for its consideration together with any amendments that he thought desirable.

But the legislative sovereignty of the Council was defined closely in the Acts of 1828, 1842 and 1850. The doctrine of repugnance was embodied in all three. The Legislature, moreover, could not interfere in any manner with the sale of lands belonging to the Crown, or with the revenues derived therefrom. This last limitation in particular gave rise to much bitterness in the minds of the non-official members who wanted to appropriate that revenue for colonial purposes.

At the same time the Council could return a bill to the Lieut. Governor with a message signifying which amendments were agreed to. Occasionally it took upon itself the responsibility of throwing out a bill completely. Denison's Education bill was rejected on the

(70) Executive Council Minutes No.30, 19/5/48 & No.33, 25/6/48.
H.T.G. 13/4/48 & 4/7/48.

second reading in 1848, together with a bill dealing with the construction of cross roads.

But the giving or withholding of assent to bills was the Lieut. Governor's privilege. Alternatively, he could reserve a bill for the signification of the royal pleasure. At all times his assent was subject to disallowance, by Order in Council, within two years of the receipt of the bill by the Secretary of State. Any such disallowance was signified to the Legislative Council by the speech or message of the Lieut. Governor, or by proclamation in the Government Gazette.(71)

If the Lieut. Governor's power in the field of legislation was, despite statutory limitations, not inconsiderable, his financial authority, though subject at all times to any financial stringency imposed by the Home Authorities, was sufficient to leave him comparatively independent within the colony. His own salary, together with the cost of maintaining the judicial and ecclesiastical establishments was embodied in the schedules attached to the statute which authorized the creation of the colonial legislature. Another schedule fixed more or less the arrangements under which the civil establishment was to be maintained, though for this purpose the Lieut. Governor was empowered to vary the appropriations. In other words, in voting the annual estimates the legislature had no power to reject these which were fixed according to the schedules.

Over taxes and other duties the Legislature exercised more

(71) 9 Geo.IV c.83: 5&6 Vic. c.76: Denison to Grey 25/4/48& 12/5/48.

control. The Lieut. Governor was bound, according to the Imperial Statute to appropriate revenues derived from such sources to the colonial public service by the advice and consent of the Legislative Council. But the purpose of any such appropriation was decided by the Lieut. Governor. No appropriation could be made except on his recommendation. It was then embodied in an ordinance to which the Council was asked to consent.

On the other hand, the Lieut Governor had no control over the handling of the finances of the Commissariat. For though the Deputy Commissary General worked under the Lieut. Governor's general supervision, he took his instructions from the Lords Commissioners of the Treasury.(72)

Having reviewed the extent and variety of the powers vested in the Lieut. Governor it may be asked how far he was able to initiate and follow a policy without interference from the Secretary of State. Before proceeding to reply to this two other questions bearing upon it should be raised and briefly answered. First, was the Lieut. Governor's salary and allowances sufficient to permit him to play effectively the part of Chief Executive of the colony? Second, what defects existed in the means of communication between him and the Secretary of State?

The schedule fixed the income of the Lieut. Governor at a sum just short of four thousand pounds, half of which was met from the Commissariat Chest. He was allowed too on his personal establishment a Private Secretary and an Aide-de-camp. He enjoyed the

occupation of Government House and its offices, which were kept in repair by the colony. In addition there was a cottage at New Norfolk. A similar place at Launceston was surrendered when Wilmot assumed the position. No allowance was provided for coals, candles, oil and wood for the dwelling house, but only for the rooms occupied at Government House by clerks. Boyes, the Auditor, wrote often in his 'Journal' of the parsimony of the British Treasury. Wilmot referred somewhat bitterly to the dilapidated state of the buildings when he took over. He made a special exception of the gardens, which, henceforth, the Lieut. Governor was expected to maintain out of his own private purse, but which he handed over to the care of the Van Diemen's Land Horticultural and Botanical Society. So severe was the retrenchment that he had to dismiss the convict servants, for which he would otherwise have had to pay the Commissariat. His successor was more outspoken in his complaints. For in one of his first dispatches to the Secretary of State Denison deprecated the curtailment of his salary caused by the refusal of the British Treasury to pay for the period intervening between the date of his appointment and the date of his arrival in the colony. Half of the salary that had up to that time been paid to him had to be refunded to the Commissariat. Nor was he satisfied with the financial assistance given to new appointees such as himself, who were obliged to go to considerable expense to fit themselves out for the position they were called upon to occupy. (73)

(73) Denison to Grey 16/3/47 & 1/4/47.

It can be said that neither the Treasury nor the Colonial Office was sufficiently alive to the necessity of providing the Lieut. Governor with the means of upholding his dignity as the leader of society in a colony where, in Denison's words, "a low estimate is placed upon everything that can distinguish a man from his fellows with the sole exception of wealth". Faced as he was by a newly created, aspiring and jealous landed class, the Lieut. Governor could ill afford ~~to~~ even to appear depressed by financial worries or reduced to circumstances unworthy of his official position.

It would be difficult to overestimate the remoteness of Van Diemen's Land at this time. Communication between the Lieut. Governor and the Secretary of State was slow. Despatches took anything from four to six months from the time of writing to the time they were received. In other words, if a matter was referred home for advice or confirmation a full year could well elapse before a reply was received. The effect of all this may well be seen by studying the difficulties which beset the Lieut. Governor in a constitutional crisis, such as Denison had to face immediately after his arrival, when he had to refer to Grey the matter of six appointments to the Legislative Council before he could carry on any legislative business. The remoteness contributed also to accentuate the differences that arose between Franklin and Montagu and between Wilmot and Nixon. It aggravated the misunderstanding by Secretaries of State of the problems of the colony and encouraged some, in particular Stanley and Gladstone, to listen to reports without

assuring themselves of their authenticity.

But this very remoteness was turned to advantage by a Lieut. Governor who had courage, resolution and initiative. Undoubtedly in these respects Arthur and Denison were superior to Franklin and Wilmot. From the first Arthur showed a ~~marked~~ disinclination to refer to Sydney for decisions, and, though he never failed to show marked respect for the Secretary of State, he made decisions more than once about the confirmation of which he hinted that he had little doubt. Similarly, Denison, fully aware of Grey's confidence in him, took decisions which the Secretary of State, far from the scene and unfamiliar with the circumstances, could only endorse.

Can it then be said that, given the right attributes just mentioned, a Lieut. Governor was in a position to follow a policy without interference? It has been shown that he was possessed of powers of appointment and suspension and exercised authority in many fields, - legislation, finance, military and ecclesiastical affairs, and over the convict department. At the same time these powers were far from absolute, being subject to many limitations. Some powers could be exercised only with the advice of the Executive Council, others with the advice and consent of the Legislative Council. His relations with the Commissariat, the Military forces, and the Church were largely determined by the fact that the leading representatives of those different bodies took their orders from elsewhere. And all the time he was subject to an interminable series of instructions from the Secretary of State containing rules drafted in the minutest detail. The regulations governing convict discipline

gave little hope for experimentation or novelty. All colonial enactments had to be transmitted with relevant papers attached. Detailed minutes of the Executive Council, legal reports, the Comptroller-General's reports, the quarterly accounts of the Commissariat, annual estimates and the acts and papers of the Legislative Council, all these made a steady stream of paper which flowed from the colony to Whitehall, and kept the Lieut. Governor for hours tied to his desk commenting on same. Even the form of the official despatches was determined; paragraphs were to be numbered separately to make reference easier, and separate despatches had to be written for each new appointment.(74)

Then there were those instructions which contained warnings. The Lieut. Governor must not give or receive presents, must not make unauthorized increases of officials' salaries, must discourage appeals to the Judicial Committee of the Privy Council except in important cases, must cease the practice of incurring expenditure unauthorized by the Legislature.(75)

Considering all this therefore, it would be foolish to see in the Lieut. Governor the maker of policy. Policy governing the Convict department, the military forces, the church, the granting of land, and in no small measure, finance, was made at home. The Lieut. Governor was no more than a senior officer of the civil service carrying out orders in the manner instructed by the central office or by 'headquarters'. It was the peculiar distinction of both Arthur

(74) Stanley to Wilmot, 8/7/45.

(75) Stanley to Wilmot, 10/1/45, 25/3/45; Gladstone to Wilmot 20/4/46.

and Denison that they were able to carry out orders from 'headquarter with the impersonal efficiency and with ^{the} complete freedom from flurry and bluster ^{that is} so becoming in a good officer, whether military or civil. ~~They~~ But though expert in attending to routine business, they were not incanable of making decisions in the field. Arthur fought bush-ranging in 1826 as Denison fought the ravages of fire and flood and manned the defences of Hobart Town in 1854. It is then within these limits where policy, once formulated, had to be implemented that a Lieut. Governor may be said to have had scope for his initiative. It was just because he lacked such ~~unskittin~~ initiative that Boyes called Wilmot the Governor that could not govern.(76)

(76) Boyes' Journal, 21/1/46.

Chapter II.

The Executive Council

"The Government of the Colony," wrote Mr. Auditor Boyes in 1835, is nominally vested in the Lieut. Governor and an Executive Council. I say nominally because the Executive Council as a body is powerless. The real government is composed of Col. Arthur, his two nephews and Murray, the Editor of the Tasmanian Newspaper."

During the Wilmot-Denison period, the Executive Council consisted of some five to six members. Under his Excellency the Lieut. Governor they ranged themselves, according to a strict rule of precedence, in the following order; the Senior Officer of H.M. Forces; the Lord Bishop; the Colonial Secretary; the Colonial Treasurer, and the Chief Police Magistrate.(1) The number was five until at the very end of the Franklin period, when the Diocesan see of Van Diemen's Land was set up, and Bishop Nixon on entering the see was appointed.(2) Not that he was the first ecclesiastical member, for the Archdeacon sat for some years in the thirties.

Certain offices were recognised from the beginning as carrying executive rank. The commission and instructions brought out by Darling, authorized the establishing of the Council, fixed the quorum at two members, and laid down the rules of appointment to and the powers vested in it. It also determined that the Chief Justice and the Colonial Secretary should be members. Chief Justice Pedder continued to sit in the Council long after Chief Justice Forbes in New South Wales retired from it on the ground that it was

(1) Boyes in his Journal, 23/8/43, gives an amusing account of the jealousies aroused concerning the order of precedence.

(2) Minutes of the Executive Council, 20/7/43.

improper for the head of the judiciary to be one of the executive. Not till 1835 did Pedder give up his executive duties.(3) Even so, the Chief Justice resumed his seat on 17th May 1839 following the receipt of new instructions. On the following day, Franklin in a despatch to Glenelg regretted the fact that the new commission did not provide for the re-appointment of the Chief Police Magistrate, who had served well since he succeeded the Chief Justice in 1835. In reply, Russell explained that, in re-issuing commissions of appointment in 1837 on the demise of the Crown, clerks in the Colonial Secretary's department had made some mistakes, one of which was the commission under which the Chief Justice had been re-appointed. In further instructions issued under the Royal Sign Manual, the Chief Police Magistrate was appointed instead of the Chief Justice, and Russell asked Franklin to thank Pedder for services rendered in the interim period.(4)

The Senior Officer and the Bishop took their seats ex-officio as the heads respectively of the military and ecclesiastical establishments. Nor was there any doubt about the appointment of the Colonial Treasurer, for then as now finance touched most things, and when the annual estimates were being discussed by the Executive before their presentation to the Legislature, the Treasurer's specialist knowledge was indispensable. The last seat was normally occupied by the Chief Police Magistrate, who was at the head of an establishment that extended over much of the State. It was assumed that the nature of his varied and widespread activities made him

(3) Goderich to Arthur, 13/3/35.

(4) Executive Council Minutes, 17/5/39; Franklin to Goderich, 18/5/39; Russell to Franklin, 15/10/39.

specially fitted to advise in the Council of the Colony.

Of these five members of the Executive only two, namely the Colonial Secretary and the Colonial Treasurer, sat in the Legislative Council. Nixon's efforts to secure a legislative seat were frustrated by Wilmot's recalling Stanley's rule that no one holding an official position should sit as a non-official member of the Legislative Council, and as any vacancy likely to occur would be for a non-official member, the Bishop's claims were ruled out.(5) A number of departmental heads, - the Auditor, the Collector of Customs, the Postmaster General, the Director of Public Works, the Attorney and Solicitor Generals, - were not members of the Executive Council, and had no share in its deliberations and decisions.

Could it be argued then that the Council was too small and too restricted in experience to deal properly with the varied problems of colonial government? The size of an executive is always closely related to its effectiveness. A large body is usually a less unified and effective instrument of executive power. At the same time there is a minimum below which the number should not fall if the body is to be capable of handling complex and weighty business.

The executive business in this period could hardly be called complex, and only on rare occasions was it weighty. The combined experience of the five or six men who sat on the Council was adequate to handle it. Matters raised by the departments of state

(5) Wilmot to Stanley, 17/11/43.

were readily understood by one or other of the members. For instance, if the Surveyor-General made representations that his department needed a fireproof strongroom to house charts and maps the Treasurer was in a position to explain the cost that would be incurred in building an extension.(6) A more complex question such as the collection of quit rents was explained by the Treasurer while further advice was sought from the law officers. Most matters arising from the relations between the Colonial Government and the Commissariat were handled in the Council by the Colonial Secretary.

Legal advice was always placed at the disposal of the Council. On a number of occasions the Attorney General, sometimes accompanied by the Solicitor General, was called in. He gave his advice on the drafting of Bills. In view of the widespread failure to pay quit rents, his opinion was sought whether the Crown should take action to resume land held by defaulters. During the sittings at the close of 1847, when the removal of Judge Montagu was under consideration, the Law Officers sat in the Council for lengthy periods. There were instances too of both the Chief Justice and the Puisne Judge attending the Council to explain points arising from their judicial reports.(7)

Such attendance was not confined to the lawyers. On one occasion the Immigration Agent was called in and questioned,(8) and on another the Registrar of the Supreme Court. During a discussion on currency problems McLean, the Deputy Commissary

(6) Executive Council Minutes,
(7) Minutes, 27/7/42, 19/6/44, 9/3/46 & 22/7/47.
(8) Minutes, 31/12/42.

General attended together with Swanston and Dunn, spokesmen of the banks.

The Council asked for and obtained written reports on a number of questions. For example, when a citizen built a structure which allegedly encroached on Liverpool Street, the matter was referred to the Surveyor General for his report.

It may be said therefore that the composition of the Executive Council in the period immediately preceeding the establishment of responsible government was suited to the tasks it had to perform. There was no radical change in 1856. The first Executive Council under the new constitution included, under the Lieut. Governor, Champ, Smith, Chapman, Anstey and Nairn; that is five members, and for many yaers after that its size changed very little.

The extent to which the different Lieut. Governors worked with and through their Executive Councils varied considerably. During his last twelve months as Lieut. Governor Franklin met his Council^{on}/no less than fifty occasions, or, on the average, once each week. In 1838

there were more than sixty meetings. By contrast the Council met only nine times in 1844, and on seventeen occasions in 1845. In other words, in a period of unprecedented economic depression, when the Lieut. Governor was faced with problems of almost insuperable difficulty, he did not chose^o to look so readily for advice and support to his Executive Council; a fact not without importance in revealing the man. Certainly as his difficulties mounted and he felt more lonely and somewhat desperate Wilmot was inclined to seek council^{se} more. But if the regular meetings following Latrobe's assumption of authority

were counted the number would make only twenty one for 1846.

Denison met his Council for the first time in Feb 1847 and by the end of the year the number of meetings reached forty. He followed this up in the next year with thirty three meetings, after which there was a sharp decline. In 1849 the Council met fourteen times and in 1850 sixteen times. But for the rest of Denison's period meetings averaged more than twenty each year; that is, somewhat less than twice each month.

There were a few periods of overwhelming pressure. For instance, at the end of July and at the beginning of August 1842 the Council met five times in less than a fortnight due to the unusual accumulation of business. A number of bills had to be considered including an important one designed to extend the jurisdiction of the Court of Requests. Then following complaints from the Secretary of ~~the~~ State concerning the irregular methods of authorizing increases of officials' salaries, the Council had to go in detail into the whole question of classification of salaries. Then there were the estimates for 1843 to be considered before being presented to the Legislature. Finally, inter alia, there was a report of the Chairman of Commissioners for the Investigation of Titles to Land. There was a similar hectic period at the end of Denison's first year of office. The Council met seven times in December and twelve times in January, but on this occasion the business was taken up almost entirely with one item, namely the conduct of the Puisne Judge, Algernon Montagu

and his removal from office. Again, almost at the end of Denison's period, in August 1854, the Council met three times within a few days. But on this occasion the cause amounted to little more than registering the resignation of Chief Justice Pedder and arranging for his successor.

Attendance of members was, with one exception, quite regular during this period. Of course, in such a small Council irregular attendance would have been too noticeable and could not have been tolerated. The Lieut. Governor was empowered to seek an additional appointment to replace any member whose attendance was unsatisfactory; but he saw no occasion to use his power. The Bishop was the one most guilty of absenteeism. He missed three of the seven meetings immediately following his appointment. He never entered the Council for over nine succeeding months in 1844, a year when there were only nine meetings, or for five months in the first half of 1845, after which he did not appear again from July to December. His attendance improved in the following year, but in July he sought and obtained leave of absence, which kept him away for over two years. He resumed his seat in August 1848. However the Lieut. Governor did not seek a replacement. The Chief Police Magistrate's duties made him miss a number of meetings, but, all things considered, his attendance was exceptionally regular. One other incident may be mentioned. The new Senior Officer in 1846 refused to take the oath to Sir George Gipps, who had in fact left the colony, though his successor's commission had not arrived. He remained away from Council meetings until the day when Latrobe

was sworn in as Administrator, upon which the Senior Officer took the necessary oaths.

Meetings of the Executive Council were arranged at the wish of the Lieut. Governor. He began by asking the Colonial Secretary for a report of all matters to be brought before the Council with papers relating to them. The Colonial Secretary addressed himself then to the Clerk of the Council, whose duty it was to collect and arrange the material in readiness for the meeting. The Lieut. Governor decided the time of meeting and what had to be submitted. The Clerk of the Council then circularised the members and gave the detail of the business to be considered, Here is a typical circular with agenda:

Council Office.

14 May 1850.

Circular

The Lieut Governor requests the members of the Executive Council to assemble on Thursday 16th instant at 2 o'clock.

By His Excellency's Command.

Adam Turnbull.

The following subjects will then be considered:-

1st The mode in which it would be advisable to raise money for the purpose of establishing a steam ferry from Hobart Town to Kangaroo Point.

2 Do. for the purpose of erecting a proper covered market at the Old Market place in the vicinity of the new basin.

3 The advisability of reducing the present duty of 15 per cent upon imported goods to 5 per cent making up for the deficiency by greater attention to the valuation in collecting the duty.

More items were dealt with at the meetings in Franklin's time than ever afterwards. Even in his time the number varied widely from two or three to twenty-five or twenty seven. During his last twelve months in office the average number of items on the agenda was eleven. During 1844 and 1845 the Council had no more than one or two items before it at any meeting. During Denison's first year only once did

the number rise above three. In eight successive meetings the Council considered nothing but the annual estimates. It was normal for Denison to call the Council together to discuss and advise on one important subject such as the new Land Regulations, the defences of the colony, the proposal of a Representative Assembly or the conduct of an important official. For example, Dr. Turnbull's case was discussed summarily, but the conduct of Judge Montagu and later, of the Chief Justice, formed the basis of discussion at successive meetings.

It cannot be said therefore that the amount of business transacted in the Executive Council was increasing. The Council sat oftener and probably longer under Franklin than under his two successors. There is no evidence to show that the nature of the business had grown more complex. What is certain is that Franklin brought before the Council all kinds of business which Wilmot and Denison thought could well be decided without reference to it.

In view of all these inconsistencies it can be fairly said that there was no set rule governing the order of business. The order was entirely at the discretion of the Lieut. Governor, who in the first place decided the business to be submitted. However, the reports of the Chief Justice and the Puisne Judge were regularly taken first. Bills to be submitted to the Legislative Council were usually placed high on the agenda paper.

The proceedings of the Executive Council were recorded in the Minute Books. From these it is possible to get a good idea of how matters were raised, discussed and decided. The range of business was too limited and the tempo of government too leisurely to make

necessary the streamlined procedure of modern cabinets. There was one instance only of delegating special business to a committee of Council, when estimates were referred to a Finance Committee. There was no need for Council to go into committee to avoid publicity, for all its proceedings took place in camera. Any decision that the Lieut. Governor wanted to make public was left entirely to his discretion. Certain discussions were as a matter of course announced in the Gazette. But the manner in which such decisions were reached was never disclosed.

Rarely did discussion proceed on the basis of memoranda previously circulated or even submitted at the meeting. There were instances of the members tendering their advice in the form of memoranda. When the Council was deliberating on the conduct of Judge Montagu, Bicheno submitted a memorandum relating to the intended action of the Puisne Judge as disclosed in an interview which the latter had had with the Colonial Secretary. (9) Again when the Lieut. Governor sought the advice of the Members on a question of Banking policy they individually submitted memoranda. However, reports, letters and memoranda from all manner of people formed the basis of much of the deliberation within the Council.

Following its deliberations the Council did not have recourse to a voting procedure. This is not to say that there were no differences of opinion. No Council worthy of the name could avoid some differences. The advice given to the Lieut. Governor was not always identical, though generally it was so. It was a normal proceeding for the Chief

(9) Executive Council Minutes, 14/12/47.

police Magistrate and the Colonial Treasurer to advise certain action in much the same words. After reporting this the minutes add, "The Senior Officer and the Colonial Secretary concur". The following expressions appear repeatedly in the minutes; "The other members concur", "The Council advise", or "The Council are of the opinion that...." Unanimity was the rule. Nevertheless the final decision rested with the Lieut. Governor. If he knew his instructions, he did not by any decision flout the advice of his Council. But it was not the function of the Council to make decisions for him, and if it so happened that the Council offered widely differing suggestions he had to choose between them.

The Clerk of the Executive Council was also Clerk of the Legislative Council. The Clerk of the Councils, as he was called, occupied quite obviously a responsible official position, providing as it did a vantage point from which could be surveyed the whole range of government. The position was occupied during most of this period by Adam Turnbull. During the first two years of Denison's governorship when he was acting Treasurer, Kirwan was Clerk of the Councils.

The Minutes of the Executive Council were kept in triplicate. One copy was sent half yearly to the Secretary of State. A minute was written upon each item. Minutes were numbered consecutively and arranged under the date of the meeting at the opening of the Book of Minutes, while a subject index was compiled at the end. (10) In

(10) The Book of Minutes, 1851-1860 omitted the subject index.

(11) Executive Council Minutes, 1851-1860, p. 17.

Franklin's time the proceedings were recorded neatly and in considerable detail, individual members being occasionally quoted verbatim. Under Wilmot the amount of business was smaller and generally it was reported in less detail. There were exceptions as when the Council deliberated upon the need for a third judge or when revenue and expenditure were under review.(11) Under Denison, when the conduct of Montagu was being considered almost verbatim reports were given together with any correspondence and other papers relating to the question. Later, however, proceedings were not recorded in the same detail. For instance, the record of the "Chapman case" was written up briefly in oratio obliqua.

When the Executive Council was first set up its founders had a double purpose. They intended that it should provide moral support for the Lieut. Governor, and at the same time that it should exercise restraint upon certain of his actions. The commission carried by Darling distinguished acts that needed "the advice" from those needing "the advice and consent" of the Council. The Lieut. Governor could grant a pardon or a reprieve with the advice of his Council, but its consent was necessary to make valid any of his acts which involved either the suspension of an official, the granting of land, or the establishing of fortifications. Beyond these the Council deliberated from time to time upon Government bills; it examined and advised upon the annual budget and estimates; it concerned itself with defence plans; it discussed government reports; and sometimes it recommended appointments. In Franklin's time it advised

(11) Executive Council Minutes, 24/6/45, 1/7/45.

upon a variety of questions, which Wilmot and Denison preferred to see decided within the administrative departments. These included the establishment of schools and churches, the construction of waterworks, repairs to the gaol, pensions claims, the boundaries of townships, rations for convict labour, and plans to receive ticket of leave men from Norfolk Island. Even Wilmot referred to his Council the question of lights in the streets, and Denison the need for a steam ferry between Hobart and Kangaroo Point.

It was by no means the bounden duty of the Lieut. Governor to submit his legislative programme to the Executive Council. In this, as in other things, Franklin differed from his two successors. He sought the advice of his Council on a number of Bills.(12) Wilmot did not think it necessary to refer bills to the deliberation of his Council, and only mentioned legislative proposals when these had some bearing upon the subject under discussion. For instance, when the Council was discussing means of retrenchment, the Lieut. Governor said that he had asked the Attorney General to draft a Bill amending the Municipal Corporations Act in order to transfer some of the financial burden from the Colonial Government to the Hobart and Launceston Municipal Authorities. But the Bill when drafted was not submitted to the Council. A similar disinclination marked the attitude of Denison. Only in a constitutional crisis was he prepared to consult the Executive Council on legislative business. When the Chief Justice declared the Dog Act repugnant and there was a doubt concerning the validity of a number of legislative enactments, Denison

(12) 12/7/42 Minutes

referred the whole question to the Council, which advised upon the preparation and introduction of a Bill to remove Doubts.(13) There were times when the Executive Council was asked to give consideration to the annual budget and estimates. Faced by growing expenditure and diminishing revenue Wilmot sought advice in 1845. Three years earlier the Council had discussed the increased estimates of the Public Works department made necessary by the establishment of probation gangs on the roads.(14) In the meantime certain sources of revenue, in particular the Land Fund, were drying up. The Government had to meet a financial crisis. And so the Lieut. Governor who so rarely consulted his Council, asked it to advise "what is best to be done in the present circumstances." Members were far from being unanimous. The Colonial Secretary suggested various means of reducing expenditure, including the suspension of Public Works projects such as roads, bridges and schools. He advocated too the careful avoidance of contingent expenditure, a point which did not go unobserved by Gladstone, who later wrote to the Lieut. Governor a strongly worded note on this aspect of retrenchment. On the other hand the Chief Police Magistrate argued strongly against the reduction of his establishment, declaring that "the police are the only means possessed by the Government of carrying into effect the acts of Council". The Treasurer, mindful of the extent to which the Government had borrowed from the Commissariat Chest, warned that any immediate repayment of these loans was impossible. and stressed the importance to the colony of the Land Fund. After lengthy deliberations :

(13) Minutes, 21/1/48

(14) Minutes, 28/7/42.

running through several meetings the Council Recommended to the Lieut. Governor a plan of retrenchment, the basis of which was wholesale reduction of officials' salaries.(15)

When Denison succeeded the depression had passed. Estimates were considered by his Council in seven successive meetings within four weeks in the Autumn of 1847. Unfortunately the record of these meetings contains no details. On another occasion the Executive Council was consulted only after legislative action had been taken. In 1852 the Legislature passed votes providing for an increase in the salaries of civil servants, But before proceeding to pay these increases Denison sought the advice of the Executive Council. In this instance, the Treasurer argued that, as promises of increases had been held out to the civil servants, it would be expedient to pay them. The other members concurred, and the increases were authorized.(16)

In 1855 amid new financial difficulties, Fox Young sought advice concerning the need to reduce public expenditure. The Colonial Secretary, Champ, and the Colonial Treasurer, Fraser submitted memoranda on the subject of retrenchment and, after close consultation with the Auditor, advised that, the financial situation did not warrant a reduction in salaries. The other members endorsed this attitude and the Lieut. Governor acted on this advice.(17)

From the first the Executive Council was concerned with the Government's Land Policy. Crown Lands could be sold only with the advice and consent of the Council.(18) The reports of the Commissioners

15) Minutes, 24/6/45; 1/7/45.

(16) Minutes, 30/3/52; 2/6/52.

(17) Minutes, 3/4/55; 5/4/55; 9/4/55.

investigating titles to land were referred to the Council for confirmation. The investigation of disputes concerning such titles took up ~~xxx~~ considerable time. There was also much deliberation upon the question of the land fund. When the British Government decided that the surplus should be paid into the Commissariat Chest the Lieut. Governor was advised to impress the Secretary of State with the importance to the Colony of that source of revenue. There was less agreement among the members upon the uses to which the surplus could be put. Wilmot himself outlined a plan of public works, in particular road building, together with a scheme of assisted migration. But the members could not advise the appropriation of revenue from the fund to road building, because there was a shortage of labour, nor to immigration because labourers after a short stay in the colony would leave to seek better wages in the neighbouring colonies. Instead they advised that any such money should be used to pay off the loan of thirty-two thousand pounds advanced to the colony by the banks.(19)

When the Colonial Office decided upon a change in Land policy Denison consulted his Council. The immediate purpose was to protect the rights of the Crown to resume lands granted on lease for the purposes of sale. After consideration the Council decided that, while the right of the Government to resume lands was secured, it was not advisable "to make any alteration in the existing leasing regulations which would have the effect of disturbing the present

(19) Minutes, 30/8/47.

lessees prior to the expiration of the full period of the lease². In future, however, the Government should reserve to itself power of resuming at the end of each year for the purpose of sale subject to three months notice to the lessee, who had the right to compensation for improvements.

As for the granting of small lots to ticket of leave holders, which had been recommended by the Secretary of State, the Council could not recommend the practice.(20)

The draft of the new Land Regulations was prepared by the Surveyor-General and placed before members of the Council by the Lieut. Governor. At first they were dissatisfied with certain sections and recommended that the draft be re-transmitted to the Surveyor-General for revision. When revised the regulations were considered again by the Council, which recommended they should be promulgated.(21)

There was little opportunity in this period for the Council to exercise its authority in matters of defence. The power to raise arm and move forces was vested solely in the Lieut. Governor, but to raise fortifications he had to seek the consent of the Council. Early in 1854 the Lieut. Governor presented to the Council a lengthy memorandum on the defenceless state of the colony. In it he outlined his plans for meeting an invading force. These plans included the hindering of a hostile fleet in the channel, the providing of batteries near the town, the erecting of signal stations and the

(20) Minutes 26/2/48; Grey to Denison 13/7/47.

(21) Minutes 19/5/48; 28/6/48.

raising and training of a local militia. The Council unanimously endorsed the plans, and supported his application to the Home Government for two armed steamers.(22)

The business which came most regularly before the Council arose from the reports of the Chief Justice and Puisne Judge. The Lieut. Governor could with the advice of the Council exercise the power of pardon and reprieve. When such business was before the Council it was not unusual for one of the Judges to attend in person. Except in unusual circumstances the Council advised the Lieut. Governor to confirm the sentence. It was not the practice to record in the minutes the nature of the discussion upon any case.

More fully recorded are those events involving the removal or suspension of an officer. Two outstanding instances are those of Judge Montagu and Adam Turnbull. The conduct of the Puisne Judge was raised first in the Council by the Lieut. Governor. Denison submitted a minute together with papers relating to complaints against Montagu. The next step was to seek the opinion of the Law officers whether the Lieut. Governor possessed the power to remove or to suspend a judge and appoint someone in his place. A letter was then addressed to Montagu asking him to show cause why he should not be removed from office. The Attorney and Solicitor Generals were called in and questioned on the powers of the Lieut. Governor under the Statute 22 Geo.III c 75. The members were next asked to comment individually upon Montagu's conduct, upon his arguments in his own defence, and finally whether he should be removed at once

(22) Minutes, 7/4/54.

according to the power granted in the Statute, or given further time for his defence. After further prolonged argument upon the procedure to be taken, the Council decided, the Colonial Treasurer alone dissenting, to advise immediate removal from office. The Council then proceeded to appoint ^{recommended the next day} Horne as Montagu's successor.(23)

The removal of Adam Turnbull did not take so long. It arose from his supporting, while sitting as an official member of the Legislative Council, a motion calling for the immediate cessation of transportation. Denison submitted a memorandum to the Executive Council containing the substance of a conversation between Turnbull and the Attorney-General on the duty of an official member to support the Government. Turnbull's replies to certain charges were then read. Later Turnbull was admitted to the Council where he examined the Attorney General on the matter of their conversation, and the members of Council raised various questions. This part of the inquiry is recorded verbatim. The Lieut. Governor then asked the member to state their views in writing. At the next meeting these were read, and the Council were unanimous in advising that Turnbull should be removed from his seat in the Legislative Council. However, in view of his long and excellent service, it was recommended that, if possible he should be granted leave of absence.(24)

Although the Executive Council was concerned with a comparatively wide field of governmental activity, at no point could it be said that its will was decisive. At best it was little more than an advisory body. As an instrument of government it remained a mere blunted

(23) Minutes, 6/12/47 ff.

(24) Minutes, 27/9/52; 28/9/52.

weapon. Any effectiveness it had was determined largely by the attitude of the Lieut. Governor. There were few executive actions that could not be performed quite adequately by the Chief Executive alone. To make policy was even less its business. Much of its time was taken up with confirming decisions that had been made elsewhere.

But when all this has been said the Executive Council still performed a useful function. It provided an opportunity for heads of departments and establishments to meet and discuss problems affecting the welfare and good government of the colony. Its very existence at least suggested that government was conducted not by an autocrat, but by a cabinet, which, if not responsible, was bound together by a common purpose and shared responsibilities. From the point of view of the Lieut. Governor, moreover, it was not without importance that, carrying as he was heavy responsibilities so far from home, he could turn whenever the occasion demanded it to his Executive Council for advice, encouragement, and even moral support.

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- (25) In the hour of his disgrace Wilmot's greatest solace may well have been the unanimous support given him by members of his Executive Council, which put on record its strong condemnation of the charges of immorality levelled against him.
- Minutes,

Chapter III.

The Administrative Departments.

In a Gazette Order dated 28th September 1847 it was laid down that all communications to the Head of the Administration were to be made either through the Colonial Secretary or the Comptroller-General according to whether colonial or convict matters were involved. Further to this, heads of departments and the general public were instructed that before any paper was forwarded all necessary information was to be obtained and attached. To this end communications respecting land were to be forwarded to the Surveyor-General; respecting revenue to the Collector of Customs or the Collector of Internal Revenue; respecting public works, buildings, roads and repairs to the Director of Public Works; respecting police to the Police Magistrate of the district or the Chief Police Magistrate; respecting accounts to the Auditor; respecting marine to the Port Officer; and respecting stationery, stores rations or other supplies to the Accountant of Stores. The regulations thus mentions all the civil establishments with the exception of the Clerk of the Councils, the Postmaster General, the Government Printer, the Registrar of Births, Deaths and Marriages and the Inspector of Weights and Measures.(1)

When the Colonial Estimates were drawn up the establishment for Police and Gaols was separated from the other civil establishments and placed after the Judicial, the Ecclesiastical and the Education Establishments. The departments of the law officers, who

(1) H. T. Gazette: No.99, 28/9/47. The costs of the Surveyor General's Department were not met from the colonial revenue.

worked closely with the executive departments, were included within the judicial Establishment. (2) If howxxever the law officers' departments are included together with that on police and gaols within the civil establishments, the expenditure on the executive administration accounted for nearly three quarters of the whole. The cost of maintaining the police and gaols was the heaviest individual item, being thirty eight per cent of the total expenditure

Among all the offices included within the civil establishments of the colony, the most important under the Lieut. Governor, was that of the Colonial Secretary. He ranked as the senior officer of the executive branch of the administration. He stood next to the Lieut. Governor, whose official correspondence he received and directed. His official functions were laid down quite early by

(2) The Estimates for 1850 were:-

Civil Establishments	Fixed Establishments	Total
The Lieut. Governor	£4415	£4616
Clerk of the Councils	554	893
Colonial Secretary	2589	2955
Treasurer & Collector of Inland Revenue	1722	1931
Auditor	1637	1934
Customs	4691	4873
Post Office	3208	3668
Port Officer	3934	4164
Government Printer		966
Accountant of Stores	670	704
Registrar of Births, Deaths & Marriages	200	519
Inspector of Weights & Measures	90	190
Public Works	3750	4185
TOTAL for Civil Establishments		31598
Judicial Establishment	12422	13027
Ecclesiastical Establishment	11430	15475
Education Establishment	500	805
Police and Gaols	32152	37611
Agent General in London	200	200
		<u>98,716</u>

Bathurst who wrote to Arthur," The Colonial Secretary is to conduct, under your direction, all official correspondence in the colony, and is to act on all occasions as the general medium of communication through which your orders are to be signified either to the community at large or to private persons."(3) He was also expected to assist with the details of the administration, though in no way was the Lieut. Governor bound by his advice. While the Lieut. Governor had an office strictly private to himself which was managed by his Private Secretary, this office was "not primarily a corresponding one or one of record". On the other hand the commission of the Colonial Secretary designated him as "Registrar of Records". All official books and papers were in his charge, with the exception of the Secretary of State's despatches, many of which being of a confidential nature, were preserved in the Lieut. Governor's office.(4)

The collecting, arranging and preserving of official records was therefore one of the most responsible duties of the Colonial Secretary. In 1847 it was estimated that between 600 and 800 letters were despatched each month from his office. All these were duplicated. Considering the small size of his establishment the sorting, binding and indexing of incoming and outgoing papers and documents was no mean task. Though this work was done often too hurriedly and usually without a set plan, it did still preserve the beginnings

(3) Bathurst to Arthur, 6/3/26.

(4) Bicheno to Denison, 21/9/47.

of a long and continuous series of records belonging to the Chief Executive Department.(5)

The staff in the Colonial Secretary's office included the Chief Clerk, two Clerks of Record, three Clerks for Correspondence, a Finance Clerk, a provisional and temporary appointment, and two messengers.(6) When instructions were received from Grey (7) that double entry accounting was to be adopted, a certain amount of departmental reorganization was made necessary. The Colonial Secretary pointed out that the increasing burden of work and the inadequate incentive before the clerks, some of whom had received no increment for some years. Much work also was entailed in preparing various returns and documents during the sittings of the Legislative Council. As the sittings became both more frequent and more significant after 1850 these duties involved an added strain. At the same time recent instructions from the Colonial Office called for the compiling and arranging of Statistical and other information in more minute form. Such blue books had to be prepared in the Colonial Secretary's department and were transmitted annually to the Secretary of State.

(5) See Appendix

(6) Colonial Secretary's Department: Salaries.(1850 Estimates)

Colonial Secretary	£1200
Chief Clerk	275
Clerks of Record(2 at £160)	320
Clerks for Correspondence(3 at £165, £140 and £120)	425
Finance Clerk(temporary)	150
Messengers (2 at £52)	104

(7) Grey to Denison, 15/7/48.

In the period prior to the establishment of responsible government the position of the Colonial Secretary was determined almost completely by the personal relations existing between himself and the Lieut. Governor. When differences between Franklin and Montague became acute and the latter retired to his office and confined himself to his routine duties, it was obvious in the circumstances that the machinery of government would not work. The Lieut. Governor counted quite rightly upon the loyalty of his Secretary(8) At the same time the Colonial Secretary in doing his work expected the full confidence of the Lieut. Governor, failing which his effectiveness would be much reduced. The conflict between Franklin and Montague ended in the latter's removal from office.

The appointment of a Colonial Secretary was not merely confirmed but actually made in London. When Bicheno was sent out in 1843 he was entirely unknown to the Lieut. Governor whom he was going to serve (9)

(8) John Montague: 1824 arrived in the colony: Captain in 40th Regt.: Private Secretary of Lieut. Gov. Arthur(his uncle): 1826 Clerk to the Councils and A.D.C.: 1829-1831 absent on visit to England: 1832 Col. Treasurer(acting) and then Colonial Secretary: 1833 M.L.C 1839-41 absent in England: 1832 suspended "for undue interference with the Governor's prerogatives": then appointed Colonial Secretary at Cape of Good Hope till his death 1853.

In the interim period from Jan. 1842 to May 1843 George W.B. Boyes acted as Colonial Secretary. He was a veteran of the Peninsular War. Before his appointment in 1826 as Auditor of Civil Accounts he had worked with the Commissariat in N.S.W. From May 1843 to his death in Aug 1853 he carried on as Auditor.

(9) J.E.Bicheno: said to have been the son of a Baptist Minister at Newbury(Berks): was Colonial Secretary from May 1843 to his death in Feb.1851: was interested in Botany and Astronomy and was one time Secretary of the Linnaean Society.

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Colonial Secretary: 1843-1851
Prior to 1843 responsible for the colony.

There was never any question that the position should fall to a public servant in the colony who, through seniority or exceptional ability and zeal, might be looked upon as ripe for such ~~xxxxxxx~~ promotion. By his disposition and general capacity Bicheno maintained satisfactory relations with three successive governors, though, if Boyes is to be believed, Wilmot complained bitterly of his business methods, maintaining that he could get no information from his office. (10) However, Denison, who was a stickler for sound and detailed administration did not find fault with Bicheno.

Chapman too was appointed from London, though he arrived directly from New Zealand where he had a judicial appointment. (11) His differences with Denison upon the subject of transportation led to his suspension and the appointment of Champ, who remained in the office until the new constitution began to operate. Under this Champ became the head of the first responsible ministry and was therefore the first Premier of Tasmania. (12)

(10) Boyes' Journal suggests that Bicheno did not have the confidence of Wilmot. Boyes thought too that Comptroller-General Foster intrigued against Bicheno, to whom the Secretary of State's despatches were sometimes not forwarded until their contents were public. Boyes' Journal, 8/8/44, 5/2/45, 10/8/44, 31/12/45.

(11) H.S. Chapman was Colonial Secretary from April to Nov 1852: prior to this appointment was a Judge in New Zealand: Oct 1852 was suspended: 1855 was practising law in Melbourne, became M.L.C. in Victoria and was Attorney-General in O'Shannassy's Ministry: 1865 returned to New Zealand as a Judge.

(12) William Thomas Napier Champ also had a long ~~xxxxx~~ public career after he left the 63rd Regt.: -1836 Assistant Police Magistrate and Muster Master at Hobart; Jan 1839 Chairman of Commission for Titles; Nov 1840 to Oct 1841 Acting Surveyor General in addition to duties as Chairman; May 1844 Commandant at Port Arthur; Jan to Nov, 1846 Comptroller-General; Nov. 1846 resumed duties as Commandant; Nov 1852 Colonial Secretary; Nov. 1856 to Feb 1857 Colonial Secretary and Premier in 1st Responsible Ministry. Dec. 1856 M.H.A. for Launceston.

The Colonial Secretary was a permanent member of the Executive and Legislative Councils. Next in seniority among the Executive Officers was the Treasurer. He also sat in the Executive Council, but he was asked to resign from the Legislature in 1843, when he was superseded by the Comptroller General as an official member, re-entering only ten years later.

Throughout almost the entire period, the office of Treasurer was in the hands of Peter Fraser.(13) During two intervals, when Fraser was either on leave of absence or was acting Colonial Secretary the office was filled by Dr. Adam Turnbull.(14) Whenever the office changed hands a Board of Enquiry was set up to inspect the Colonial accounts.(15)

The Colonial Treasurer conducted his department under the supervision of the Lieut. Governor and administered it according to regulations laid down by the Lords of the Treasury. He was held

- (13) Peter Fraser: 1839 arrived from England to be Sheriff of V.D.L.: 1841 3rd Commissioner on the Caveat Board: Jan. 1843 Colonial Treasurer and Collector of Internal Revenue: From Jan-Dec. 1843 sat in the Legislative Council: 1844 Commissioner on Caveat Board: from Nov 1847 to June 1849 absent in England, after which he resumed as Treasurer; Feb. 1851 Colonial Secretary(acting): Apr. 1852 Treasurer: Oct. 1852 re-appointed Commissioner of Land and Caveat Boards: Aug. 1853 M.L.C.: Nov. 1856 resigned as Treasurer on Pension: 1858 resigned from Caveat Board. Fraser was an amateur artist and exhibited in 1845
- (14) Adam Turnbull M.D. born 1803: educated Edinburgh High School and University where he took his M.D. degree: 1826 family among Scotch settlers on Macquarie and Elizabeth rivers: was private secretary to Arthur: during absence of John Montague was Colonial Treasurer: Dec. 1842 Clerk of the Councils: March 1844 Chairman of the Caveat Board: from Nov. 1847 to June 1849 Col. Treasurer(acting), after which he resumed as Clerk of Councils: from Feb 1851 to April 1852, Col. Treasurer(acting): Sept. 1852 removed : Aug. 1852 resigned as Chairman of Land and Caveat Boards to become Presbyterian minister at Campbelltown: he resigned as minister in 1874 and died in 1891.
- (15) In 1852 the Board consisted of the Auditor and the Registrar of Deeds: in 1855 of the Deputy- Commissary General, the Auditor, and the Manager of the Commercial Bank.

immediately responsible for the state of the Colonial Chest. As the Collector of Internal Revenue he supervised the collection of fees, licences, quit rents and other sources of revenue. He requested the Collector of Customs to pay his daily collections into the Commercial Bank or any other bank he wished to name. His official relations with the Managers of the several banks were an important factor in the financial policy of the Colony. (16) Bank rates which affected not merely loans to the government but the general economic welfare of the colony had a special importance for him. This department too controlled expenditure. It was responsible for seeing that departments did not exceed the 'votes' of the Legislative Council or spend public money that had not been appropriated. The salaries on the "fixed establishment" were paid by the Treasurer. Contingent expenditure was met in a form laid down by Treasury regulations.

The manner of keeping accounts too was strictly controlled by the Lords of the Treasury. In 1847 new regulations were issued among other things to introduce the double entry system of book-keeping. (17) For the future the Treasurer needed the schedule of establishments of the colony borne on the estimates if he was to be able to authorize expenditure. The new insistence that all expenditure had to be related strictly to estimates voted by the Legislative Council revealed the weakness of the arrangement that kept the Colonial Treasurer out of the Legislative Council.

(16) The Colonial Secretary once enquired why the deposits in the Commercial Bank were so much larger than deposits in other banks. Col. Sec. to Col. Treasurer, 12/16/54). Boyes also notices Swanston's annoyance at Wilmot's putting Government and Public Works accounts in another establishment. (Journal, 20/12/44).

(17) Grey to Denison, 15/7/48: Col. Sec. to Treasurer and Auditor, 9/1/49.

After the passing of the Australian Colonies Government Act (1850) it was necessary that a warrant should precede each payment. The old methods of requisition and approval were discarded except in the Department of Public Works.(18)

The department of the Treasurer and Collector of Internal Revenue had two branches. The Treasury branch had a Chief Clerk, ~~and~~ a Second Clerk and an Accountant; the Internal Revenue branch a Chief Clerk and a Second Clerk, who was a temporary and provisional appointment.(19) It is not surprising therefore that, with such a meagre establishment, the Treasurer looked somewhat ruefully upon the new Treasury regulations. The burden of work was increasing and there was little incentive. The first Clerk of the Treasury was appointed in 1834 at an annual salary of £200, which from 1842 increased by £10 annually until it reached £250 in 1846. For sixteen years he had no other advancement. During the re-organization therefore the Treasurer asked that annual £10 increments be paid to the Chief Clerk till his salary reached £300. He reported also that the Second Clerk was willing to undertake the duties of accountant under the new system, for whom he recommended a salary of £200. The change too, he thought, would involve removing a clerk from the Internal Revenue to the Treasury and the appointment of an additional clerk in the Internal Revenue branch on a salary of £120 to £150.

(18) The law officers gave their opinion that, under Sec.14 of the Imperial Act, no payment could be made out of the Public Treasury except after receipt of a warrant under the hand of the Lieut. Governor. The acting Colonial Secretary (Fraser) thought that the method being used was more convenient. Col. Treasurer to Col. Sec. 27/12/51.

(19) See over.

When a junior clerk was suggested the Treasurer thought the offer insufficient, but the Lieut. Governor made a marginal comment that there was no hope of the Treasurer getting the additional staff he was seeking, as there could be no approval of any increases until they were sanctioned by the Legislative Council. For the mood of the Council at the time was not favourable to increased expenditure.(20)

One of the key figures in the Colonial administration was the Auditor. He was an important link connecting the local government with the Home Authorities. He was responsible both to the Lieut. Governor and to the Commissioners of Audit in Somerset House. These gentlemen in London exercised a close periodical check on the colonial accounts that had been forwarded. No matter, however inconspicuous or local in its application, was exempt. Not infrequently queries and observations were sent to the colony.(21)

(19) Colonial Treasurer's Department: Salaries (1850 estimates):

Treasurer & Collector of Internal Revenue	£800
Chief Clerk (Treasury branch)	£260
Second Clerk	£160
Accountant	£200
Chief Clerk (Internal Revenue)	£250
Second Clerk (temporary)	£120
Messenger	£ 52

(20) Col. Treasurer to Col. Sec. 4/4/49; Col. Sec. to Auditor, 20/7/49.

(21) For instance, a letter dated 27/7/49 from the Audit Office at Somerset House enquires whether, when market tolls were leased to a Mr. Scott in 1846, tenders had been called; and further whether Mr. Scott held a certain government appointment. If so, it was contrary to regulations, as Government servants were ineligible to participate in any public contract.

The office of Colonial Auditor was filled for more than twenty-five years by George Boyes, a Peninsular war veteran, who entered upon his duties in 1826 after service with the Commissariat in New South Wales. He served four Lieut. Governors, and seems to have earned their respect. Franklin appointed him Acting Colonial Secretary from the suspension of Montague to the arrival of Bicheno. Wilmot made him a Commissioner on the Caveat Board, and later he became an official member of the Legislative Council. His private "Journal" reveals that he figured quite regularly in the political and social circles of the colony, though by disposition he preferred probably the less prominent position of observer. Not one of the four Lieut. Governors earned or retained his respect.

During the Boyes period there were five branches of the Audit Department.(22) The first and most important branch consisted of two clerks, whose duty it was to examine and check all accounts and abstracts excepting those relating to police and gaols. The second, made up of three clerks, was engaged in arranging and completing the various accounts, both receipts and expenditure, which had to be transmitted to the Commissioners of Audit in England. The third, consisting of one clerk was responsible for details of the Revenue and expenditure of the Colony for transmission to the Colonial Office. Yet another clerk, representing the fourth branch, was engaged chiefly in receiving the accounts from the Treasurer and making out

(22) The salary of the Auditor was £600. He had two clerks at £200, one at £175, one at £140 and one at £120, and a messenger at £52. (1850 Estimates)

the Abstract Books. And finally one clerk worked exclusively on the police and gaols accounts.

Like the Colonial Secretary and the Treasurer, the Auditor felt the strain imposed by the introduction of new Treasury regulations, including double entry bookkeeping. Like them too he asked for more staff, recommending the engagement of a steady middle-aged clerk familiar with double entry bookkeeping accounting, together with a temporary clerk at a salary of £100.(23) Eventually he was granted temporary assistance for the reorganization period. But when he sought to make these officers part of his permanent establishment the Lieut. Governor appointed a Board of Enquiry to investigate the working of the Audit Office.(24)

The Colonial Treasurer, the Clerk of the Councils, and the Registrar of the supreme Court made up the Board which reported in September. It thought the first branch was proved efficient by the fact that "so few errors have ever been detected at the final audit in London". The only criticism of the work of the second branch was that the accounts furnished regularly every quarter by the Accountant of Stores had not been examined since 1844. The Auditor replied that such an examination would call for at least one more clerk. Besides those accounts had never been called for by the Commissioners of Audit. The Board therefore recommended that the preparation of these accounts by the Accountant of Stores should be discontinued. They

(23) Auditor to Col.Sec. 17/4/49.

(24) Government Order issued from the Colonial Secretary's Office, 16/7/50.

also considered favourably the Accountant's recommendation that all receipts for stores should be sent directly to the Auditor where authorization for the payment of contractors could be made out. Though this change would entail extra work for the Auditor's staff it would relieve correspondingly the work of the Accountant of Stores and prevent unnecessary waste of time and effort.

The Board reported too that unnecessary work was being done in the Audit Office as a result of Boyes' insistence that two sets of accounts, one answering to the old regulations and the other the new, were to be prepared for the Commissioners of Audit. ~~The~~ The Board disagreed with the Auditor's interpretation, maintaining that the new regulations completely supplanted the old and not just partially as the Auditor thought. The new system, the Board said, provided not merely what was necessary for the colony, but also information for the Lords of the Treasury, and for Parliament on all points relating to Colonial receipt and expenditure. One set of accounts, in the mode set out in the new regulations, was sufficient, and the labour saved, they calculated, would be almost half the time of a clerk. The Auditor replied stubbornly that it was not the business of the Commissioners to elicit ^{the} information, which the Board said was a simple enough matter, from the one set of accounts they recommended should be forwarded.

However, on the main point of the enquiry whether the Auditor should retain the additional staff on his permanent establishment the Board recommended that the employment of the temporary assistants should not be discontinued before the financial

statements due at the end of the year showed that they could not be maintained.(25)

So the Auditor held on to his staff. In this way Heads of departments lived constantly under the threat of the axe of retrenchment, which fell heavily in the years of recurring depressions.(26)

Closely related to the Auditor was the Accountant of Stores. For most of this period this office was in the hands of Manley, who succeeded Boyes as Auditor on his death. There were no stores under the charge of the Accountant, except a store in which samples were kept. All stores were contracted for. Previous to 1837 the job had been done by Ordinance, but it had resulted in waste and a great loss of articles. Up to 1844 stationary was contracted for in the colony, but after that it was procured in England, and issued in detail to departments. The main weakness of the whole system was that insufficient check was kept on the contractors. Manley recommended to the Board of Enquiry that departments would do well where possible to compare the stores they received with the approved samples kept in the Accountant's store. The Public Works Department followed this practice.

The Accountant had two clerks and a storekeeper, but one clerk was wholly occupied with Commissariat business, and the storekeeper was mainly occupied with the issue of stationery.(27) Considering the number and variety of accounts for which he was responsible the Accountant's establishment was small enough.

(25) Report of the Board of Enquiry investigating the working of the Audit Office(1850)

(26) Boyes' Journal, 15/3/46 & 5/4/36.

(27) See Manley's evidence to Board of Enquiry.

The Attorney General and the Solicitor General were Executive Officers.(28) They represented the Crown and the Departments in the Courts and advised the Government on legal questions. Though not members of the Executive Council, they were frequently called in to give opinions at the request of the Council.(29) The Attorney General occupied an official seat in the Legislature in (30) When bills were drafted they were normally sent to the Attorney General, who reported on them to the Lieut. Governor before they were submitted to the Legislative Council.

The Law officers were called upon to advise on innumerable matters ranging from the power of the Crown to collect licences under the Dog Act to the Lieut. Governor's power to remove a Judge for misbehaviour. Public prosecutions at the suit of the Crown were directed by the Crown Solicitor, to whom the opinions of the Law Officers were given when requested by the Lieut. Governor In 1849 the Crown Solicitor claimed the right to seek the Solicitor General's opinion, which the latter refused to give except at the request of the Lieut. Governor, arguing that to concede the right in general would be to encourage the Crown Solicitor to evade his responsibilities.(31) Denison himself had

(28) Law Officers' Salaries.(1850 Estimates)

Attorney General £900

Solicitor General £600

Crown Solicitor £250

A clerk to each of above £430

Two messengers £104

(29) Executive Council Minutes, 6/1/48; the conduct of Chief Justice Piddar.

(30) Denison to Grey, 6/1/52.

(31) Albon Charles Stonor was Solicitor General: 1842 arrived in the colony as Crown Solicitor and Clerk of the Peace: 1847-9 on leave in England, where he gave evidence before a select committee of the House of Lords on Transportation: 1848 appointed Solicitor General during absence: leave of absence through mental distress.

to intervene. He declared that it was impossible to draw a line between those matters which should and those which should not be referred to the Law Officers for their opinions, and that such decisions must be left to the discretion and good sense of the officers concerned.(32)

The Law Officers established a sort of claim to promotion to the judicial bench. On the removal of Montagu the office of Puisne Judge went to Horne, the Attorney General.(33) Valentine Fleming, the Solicitor General then became Attorney General.(34) On the resignation of Pedder, Fleming was appointed Chief Justice over the head of Horne. At the same time Francis Smith, a future Chief Justice succeeded to the position of Attorney General.(35)

Whether judged by the size of its establishment or by the functions it performed the Department of Police and Gaols figured prominently within the life of the colony. In the first place, the activities of its officers ranged more widely than any other and touched more intimately the lives of thousands of Colonists.

(32) Col. Secretary to the Law Officers, 22/9/49.

(33) Thomas Horne became Member for Hobart Town in the Legislative Council 1856.

(34) Valentine Fleming: 1838 arrived in the colony: 1841 Commissioner of Insolencies: 1844 Solicitor General: 1848 Attorney General: 1852 M.L.C.: 1854 Chief Justice till 1869: was knighted in 1856.
(35) Francis Smith: 1828 arrived in the colony: 1842 Barrister of Middle Temple: 1848 Solicitor General(acting): 1849 Crown Solicitor: 1851 Solicitor General: 1852 M.L.C.: 1855 Member of Executive Council: 1857-60 Premier: 1860 Puisne Judge: 1870 Chief Justice: 1874-5 Administrator: died 1909.

secondly, the very penal character of the colony enhanced its importance. Thirdly, to defray the expences of its establishment cost nearly two fifths of what was necessary to meet the cost of all the establishments put together. It was this financial burden which caused members of the Legislative Council to become critical of the policy that gave rise to it. They complained that it was the duty of the Home Government to meet the cost of maintaining the Department. When these members refused to co-operate the whole machinery of government was threatened. But before the "Patriotic Six" resigned, the British Government ~~xxxxxx~~ conceded some points, and promised an annual grant of £40,000 to meet the cost of police and gaols. Evenso, the British Government took the proceeds of the Land Fund to make up for this concession.(36)

If the complaints of leading colonists were concentrated upon the Department of Police and Gaols, it was not that they desired to see its establishment reduced. They were too fearful of the consequences of living in a penal colony where the forces of law and order were under strength. It is not surprising therefore, that when the Legislative Council reduced the estimates or held up supply the Executive countered by threatening to cut all establishments, including that of the Department of Police and Gaols. This was no mean threat to leading settlers whose homesteads were settled widely amid a population that was half convict.(37)

(36) Gladstone to Wilson, 14/3/46.

(37) This was the argument of the Chief Police Magistrate in the Executive Council whenever a reduction in the estimates was under review.

At the head of the Department of Police and Gaols was the Chief police Magistrate, a position held during these years by Francis Burgess.(38) Under him were eight Police Magistrates at Hobart Town, Launceston, Richmond, New Norfolk, Oatlands, Norfolk Plains, Campbell Town and Horton, who by 1850 had seen on the average twelve years' service. There were then eleven Assistant Police Magistrates stationed at places as far afield as George Town, Westbury, Fingal, and Prosser's Plains. Almost all these places had a Chief District Constable and one other constable, and a clerk. In Hobart Town the establishment in 1850 carried a Chief District Constable, seven district constables and twenty five police sergeants. These last were paid a daily rate of half a crown. The clerical staff in the capital included a Chief Clerk and nine clerks. (39)

Closely associated were the Customs Department and the Port Office. Customs accounted for more than half of the total revenue raised in the Colony.(40) The expenditure on these two establishments exceeded that of any other civil establishments, excepting the Lieut. Governor's and, of course, Police and Gaols.(41)

(38) Francis Burgess: 1812 Captain in 54th Regt. 1813-15 served in Holland, Brabant and at Waterloo: 1835 called to the Bar: 1835-7 served on Midlands circuit: 1839 Chief Commissioner of Police for Birmingham, which office was abolished in 1842: 1843 invited by Lord Stanley to be Chief Police Magistrate and a member of the Executive Council of V.D.L.: 1847 acted as a Judge of Criminal Session at Norfolk Island, where he was taken ill: 1847-51 M.L.C. 1856 Office of C.P.M. abolished: retired on a pension of £170 p.a.: 1857-64 M.H.A. for Cambridge: died 1864.

(39) The Chief Police Magistrate received £750 p.a. (1850 estimates. Police Magistrates received from £400-£450: Chief District Constables £100: District Constables £50.

(40) In 1850 the Customs amounted to £75,250 out of a total revenue of £137,746.

(41) The total Civil Establishments amounted in 1850 to £31,602; of this the Customs amounted to £4873 and the Post Office £4164.

The Customs Collectors at Hobart Town and Launceston occupied responsible positions, and their salaries were higher than those of the heads of most departments. Until the '50's officers were appointed by and directly responsible to the Board of Customs in England, which advised the Lords Commissioners of the Treasury.(42) Their main duty consisted in supervising to levying of customs dues on spirits and tobacco and the ad valorem duty on certain imported goods. The performance of this duty involved exercising constant vigilance to prevent illicit trading and smuggling. The Department kept its own boat and crew, employed exclusively on customs duties ashore and afloat, but the co-operation of the Water Police was sought and given to suppress smuggling. In giving evidence before a Board of Enquiry in 1850 the Collector of Customs maintained that the revenue would be benefitted if an efficient Guard Boat worked within the Marine Department. The Collector at Launceston was unaware that the Marine Department assisted in any way to prevent smuggling.(43)

The 1850 estimates for the Marine Department reached a figure a little above £4,000, a sum which was appropriated almost equally to the port services in the south, to those in the north, and to

(42) The change was made between 1850 and 1852 when Customs Officers became responsible to the Colonial Government. See Grey to Denison 8/8/50 and relevant papers in Legislative Council V. & P. 1852.

The Collector in Hobart Town received £600 p.a.: in Launceston, £350 p.a. The Landing Surveyor in Hobart Town received £500, and Landing Waiters between £200 and £250.

(43) See evidence of Henry D'Arch and John Burnett before Board of Enquiry investigating the Marine Department (Legislative Council Papers, 1850).

the signal stations and lighthouses.(44) The Port Officers were responsible for the dispatching of mails. They supervised the carrying out of port regulations, including the payment of harbour and pilotage dues. Ship Reports showing the arrival and departure of all vessels were made up by them. The activities of pilots and the effectiveness of buoys, beacons and lighthouses were their special concern. The harbour masters had control over the anchoring mooring and removal of vessels. They received fees rather than a fixed salary.

In 1850 a Board of Enquiry reported adversely upon a number of aspects of the Marine Department. Though the number on the establishment was relatively large, the Board thought the organization of the Department was defective. The pilots, harbour masters and police operated almost independently of the Port Officer; books and other returns were not properly kept; stores and provisions were not subject to adequate care; out stations were not regularly visited; and the discipline in places was lax. In the north of the island the Port Officer resided in George Town, where no trade was carried on, while the harbour master was at Launceston. The report recommended that the former should move his office and establishment to the trading port. Most important of all, it stressed the importance of making the Port Officer of Hobart Town the Head of the whole Marine Department of the Colony.(45)

(44) The Port Officer at Hobart Town and George Town received £250 and £200 respectively. In Hobart there was a clerk (£100) & a pilot at Recherche Bay (£100); in Launceston there was a writer (£41) a coxswain of the Port Officer's boat at George Town (£45) and the master of the Ellen Buoy boat (£100)

(45) Report on Marine Department.

The Office of Public Works saw its activities severely circumscribed during the economic depression of the 1840's. Work on the new wharf which was begun in Franklin's time was suspended and resumed only after an interval. On the other hand, part of the surplus of unemployed was directed to road construction. Not the least part of the colonial debt owed to the Commissariat Chest arose from the hiring of convict labour. With the passing of the worst phase of the depression, Denison pushed forward resolutely a Public Works programme in which, as a trained and skilful engineer, he had a special interest. He amalgamated the Departments of Public Works and Roads. Unfortunately his efforts were denied the results they deserved by the parsimony of the British Treasury and the obtuseness of the Legislative Council, which rejected his Cross-Roads Bill in 1848.(46) The Director of Public Works in this period was William P. Kay.(47) His establishment included two draftsmen, a foreman of works, a clerk, a town surveyor for Hobart Town and two toll collectors

About the other departments and offices which figured among the civil establishments of the colony little need be said. These included the offices of Postmaster-General, the Government Printer,

(46) Denison to Grey, 6/10/47 & 12/5/48.

The Colonial Estimates of 1850 mention the following main items:

Building new Public Offices at Launceston	£1800
Wharfs, Hobart Town.	£2500
Wharfs, Launceston.	£1000
Altering & repairing Main Road.	£2000
Repairs of streets, Hobart Town.	£ 708
" 2 " , Launceston.	£ 499
Powder Magazine, Hobart Town.	£670
Extension of Waterworks, Hobart Town	£537
Building Watch House, Hobart Town.	£ 350
Improvements, River Tamar.	£ 300

The supplementary estimates contain an item of £556 "to cover expense of Steam Engine for pumping, etc. Wharfs, Hobart Town.

(47) William Posdern Kay: colonial architect: 1847 became first Direct-

the Registrar of Births, Deaths and Marriages and the Inspector of Weights and Measures. Concerning the Post Office, however, two points of interest may be mentioned. The first concerns the internal working of the Postmaster's Department and the second its relations with the outside world. Within the colony the postal system depended upon the goodwill and integrity of a number of agents stationed in the populated parts of the island. These agents in turn had to establish confidential relations with the people of the district whom they served. For often mail was despatched before postal rates were paid. The postmasters in the interior paid the amounts of their collections each quarter over to the Collector of Internal Revenue, and their salaries were not paid until accounts were closed for the quarter. Postal rates were high, particularly in respect of mail despatched to England. In 1847 Grey instructed that the Legislative Council should be asked to consider the comparative advantages of the Indian and Cape routes for Royal Mail steamers connecting Great Britain with the Australian Colonies and to indicate what financial assistance from the colony could be expected. (48) For various reasons the Council did not consider the problem of postal communications till 1852 when a select committee recommended the assimilation of the British Penny Post system to the colony together with the adoption of the principle of pre-payment. (49)

(47, cont.) or of Public Works: 1848 Director of Hobart Town Waterworks: resigned 1858.

(48) Grey to Denison, 9/6/47.

(49) Report of Select Committee of the Legis. Council on Postage Rates, dated 13/10/52.

There was one other office which, though not a department of state, was included within the civil establishments. The Clerk of Councils serves with both the Legislature and the Executive. He addressed and received correspondence in the name of either of the Councils. He approached the Lieut. Governor through the person of the Colonial Secretary. He had the duty of ordering the business of the day in accordance with the instructions of the Lieut. Governor. The office throughout most of the period was in the hands of Adam Turnbull, who, however was called upon to act as Treasurer on more than one occasion. (50)

Though not part of the civil establishment of the colony, two departments of state may be mentioned here, namely the Convict and Surveyor-General's Departments. The first of these was supervised more directly by the Colonial Office. It was financed through the Commissariat. No department of state drew the criticism of the local legislature more than this and more consideration of it may be deferred until the notorious affair of Dr. Hampton, Comptroller-General, is fully described. The administration of the second was bound up with the system of land grants and with the Land Fund and thereby with the whole financial policy of the Government.

When Arthur came to the colony he found that much of the best land had been granted by the Crown. In 1825 there was an Assistant-Surveyor-General and three others who were responsible for making

(50) In March 1842 F. H. Henslowe succeeded W. E. Nairn: in Dec 1842 Turnbull resumed the office: Henslowe acted again from 1847 to 1849 and from 1851 to 1852: in Oct. 1852 he was succeeded by Chester Wilmot.

with the help of chain and compass a rough and ready measurement of the country. The actual grant deeds based upon this measurement were made up in Sydney. A proper survey by districts began only in 1828 under the direction of Frankland. By 1837 maps existed of several counties constructed from actual survey. In that year a trigonometrical survey began led by Sprent and took in North and South Bruny, D'Entrecasteaux Channel and a portion of the Huon River.

Most of this work was halted in 1838 when, on account of a policy of retrenchment, the establishment of the Survey Department was severely reduced. Up to this point all surveys of lines of properties were referred to a compass bearing a magnetic meridian, but no attempt was made to ascertain the amount of deviation. But all the surveys were made by officers of the Government. Now that policy was changed, and survey work was given to contractors at the order of the Surveyor-General. The surveys continued to be unsatisfactory. The instruments used were not known to the Department which exercised no supervision in the field. The diagrams together with the field notes of the contract surveyor were forwarded to the Department where the diagrams were tested in the drafting room. Grant deeds were issued on the basis of these investigations and usually carried a miniature copy of the diagram. The system gave rise to inaccuracy and led to much litigation. Moreover it was more expensive than the old system. Shortly after his arrival in the colony, Denison showed himself most dissatisfied with the whole working system of the Survey Department. In 1847 the Trigonometrical Survey which had been abruptly stopped ten years before was resumed

under the direction of Major Cotton, the Deputy Surveyor-General. The actual field work was done by Sprent and Calder. In 1849 the Lieut. Governor set up a Board of Enquiry to investigate the way in which surveys were being made, and to make recommendations concerning the future structure and establishment of the Survey Department. The Board, which consisted of Power, the Surveyor-General, Cotton and Hadden, an officer in the Royal Engineers, reported early in 1850.(51)

The report recommended a discontinuance of the system of contract-surveying. Denison wrote to Grey, giving an outline of the structural changes he intended to make in the Department.(52) By virtue of his length of service, Denison recommended that Power be left in charge as Surveyor-General, though he was incompetent.(53) He was incapable of conducting surveys in the field, which he proposed to make Cotton responsible for as Deputy-Surveyor-General. In fact, Power had been incompetent even in the office in that he had been accustomed to handing over the work associated with land grants to Hurst, Chief Draftsman, who had been dismissed for fraudulent conduct.

These changes did not work out well enough to satisfy the Legislative Council, which in 1852 set up a Select Committee to enquire into the working of the Department. Its report took note of the fact that Power denied having approved of the Report of 1850.

(51) Report of Board of Enquiry investigating the work of the Survey Department, 1850; Legislative Council V. & P. 1852. No.s 41. 48.

(52) Denison to Grey, 10/6/50.

(53) Robert Power: 1841 arrived as Surveyor-General vice Capt. Boyd; his salary was £700 p.a.; 1855 resigned on pension at £500 p.a.; died in 1869.

He maintained that his signature had been obtained by subterfuge. This charge the Report dismissed as unfounded. It went on to condemn that divided and uncertain responsibility within the Department consequent upon Denison's division of duties between Power and Cotton. It said it created feelings which "operate prejudicially to the Public service and are destructive of that unanimity which should prevail in every Department." It concluded that "the amount of work performed in the General Survey has not been in proportion to the expenditure", advised the transfer of Power, who was incompetent and recommended that the office of Deputy Surveyor-General should be discontinued.(54)

Finally mention must be made of the work of two Boards set up by the Colonial Government, namely, the Caveat Board or Board of Claims and the Board of Education.

The Caveat Board arose from the desire to settle innumerable disputed titles to land. This tribunal consisted of three Commissioners appointed by the Lieut. Governor.(55) Its procedure was "unfettered by any of the rigid rules of law or evidence" and governed solely "by the broad principles of equity and good conscience".(56) In its investigation of conflicting claims it gave the widest publicity to its proceedings. When it made a determination it took the form of a recommendation to the Lieut. Governor.(57) All grants

(54) Report of the Select Committee of the Legislative Council investigating the work of the Survey Department, V. & P. 1852, 24/9/52.

(55) e.g. in March 1844, Adam Turnbull (chairman) Peter Fraser, George Hayes.

(56) Fleming and Smith to Bicheno, 5/2/49

For the powers and functions of the Board see Acts of Council 6 Wm. IV No. 11 & 3rd Vict. No. 6.

(57) There was some doubt whether the Caveat Board exercised judicial functions, but the Attorney-General denied this. See opinions of Attorney-General, Harrow and ...

were made in this way following the institution of the Board, though the right of appeal to the Supreme Court lay in all cases against the Board's determination.

The work of the Board over a number of years gave general satisfaction, and did much to confirm a number of titles that were previously vague or in dispute. Much of the confusion ~~lay~~ arose from the nature of the original grants. From 1803 to 1832, and after, grant deeds were seldom issued to the donees immediately on selection or occupation of land. The grants of Governor Macquarie usually dated from 1813 and those of Governor Brisbane from 1832. No further grants were issued till 1833. The only authority usually held by the donees took the form of letters from the Surveyor-General or the Colonial Secretary and ^{was} known as location orders. These orders contained a loose description of the land occupied and often no description whatever. Confusion grew once the land was transferred from father to son or was sold to another party, and became worse when the Judges ruled that the original grants were grants by the Governor and not grants by the Crown. And so in 1832 it was decided to make grants from the Crown to parties who held land under location orders, and as frequently such land was no longer in the possession of the original donee Commissioners were appointed to investigate and report upon applications for Crown grants.(58)

The other permanent body, the Board of Education, was set up to supervise the Public Schools in the Colony. Before 1838 such

(58) Despatches on the Statute of James in Legislative Council Papers, 1850.

as schools/existed- about 30 with over 900 pupils - were under the direct control of the chaplains of the Church of England, and were supported by an annual grant from the Government of £3500. To meet the objections of nonconformists, Franklin introduced a new system. The Schools deriving financial assistance from the Government were placed under the control of a Board of Education composed of six lay members. They had the duty of assisting the formation of schools and of recommending the amount of ^{the} contribution of the government for the support of each school. The schools were conducted upon the principles of the British and Foreign School Society.

During the ten years of the "undenominational system" the number of schools increased hardly at all, while the number of pupils rose to 1510 in 1846. (59) Almost the whole of our information is derived from the annual reports of Charles Bradbury, Inspector of Schools. These reports stress the main difficulties faced by the Board, the insufficient number of trained teachers, the poor and uncertain accommodation, the absence of adequate teaching aids, and, not the least, the lack of proper local supervision, due largely to the non-co-operative attitude of the Anglican clergy.

For, though the curriculum included the memorising of a manual, "The Faith and Duty of a Christian", written ~~and xxxxxx~~ by an Anglican and accepted by other denominations, the opposition of the Church of England never relaxed. A certain Mr. Lock, an

(59) In 1841 the only schools which had a population of more than 50 were: Liverpool St. and Campbell st. at Hobart Town; Launceston; Glenorchy; Longford; New Town and Richmond.

Anglican, reported that on inspecting schools he had found them deficient in Christian knowledge. Bishop Nixon wrote a memorial asking for the appropriation of money to various denominations for the purposes of Education. Other memorials came from the Anglican clergy, and inhabitants of Longford and St. Paul's River. These efforts aroused the controversial spirit of the colony. A memorial of the citizens of Hobart Town headed by the redoubtable Presbyterian John Lillie, condemned the Anglican move, and a similar memorial came from Launceston headed by John Oakden and John West.

Wilmot sent reports of the controversy to the Colonial Office, and the Secretary of State, who stressed the fact that the overwhelming number of the population were Anglicans, ordered a Commission of Enquiry into the truth of Mr. Lock's Charges.(60)

When Wilmot forwarded the report of the Commissioners he commented somewhat acidly that, "the charges brought by Mr. Lock and others are not substantiated."(61) Gladstone was not satisfied with such a brief comment, called for sufficient reasons to support such a ~~xxxxxxxxxxxx~~ conclusion, and in a long and involved reply instructed that teachers must no longer be allowed to act as lay preachers. Finally he introduced a new scheme for giving financial aid to independent schools. It amounted to a grant of one penny a day for each child attending school.

In 1848 the Board of Education controlled 22 schools with 1267

(60) Stanley to Wilmot, 28/8/44.

(61) Wilmot to Stanley, 2/8/45.

pupils; the Church of England 24 schools with 951 pupils; and the Church of Rome 4 schools with 317 pupils.(62) In the next two years most of the new schools were established by the Anglicans, whose Ministers were settled in every district of the island.

Once half the schools were entirely withdrawn from its control the Board of Education saw no reason why it should not resign ~~its~~ its functions and in October 1848 a new code of regulations was issued governing those schools that had been formerly under the control of the Board. Fixed salaries for schoolmasters were then abolished and the occupation of school-houses rented by the Government was discontinued. The mode of payment, suggested by Gladstone, was henceforth adopted for all schools. The effects of these changes were immediate. Some of the best among the teachers, facing a ~~dimin~~ diminution in their income, resigned and most of them left the colony. Many Protestant dissenters, strict adherents of the "voluntary principle" refused to apply to the Government for financial help. By the end of 1849, out of 71 schools 59 were under the control of the Church of England.(63)

Meanwhile Denison, whose sympathies were Anglican, had taken steps to advance the cause of education on the colony. On the death of Bradbury in 1849, he secured the appointment of Thomas Arnold to the position of Inspector of Schools.(64) In 1848 he introduced an Education Bill designed to place a greater burden of educational administration on local communities, but it was defeated on the

(62) Denison's Minute to the Legislative Council, 9/3/48.

(63) Report on Schools by Thomas Arnold, 1850; Legislative Council Papers, 1850.

(64) Thomas Arnold: arrived in V.D.L. as Inspector of Schools; married Julia Sorell, 1850:

Secretary of Education from 1854; converted to Roman Catholicism, then upon Roman Catholicism.

(65)
Second Reading. In the prevailing temper of the Legislative Council it was shelved, and re-introduced with little alteration in 1852. For the training of teachers a Normal School was opened in 1851.

By 1853 it was obvious that the new system was not working successfully. The Legislative Council, in critical mood, set up a Select Committee, to investigate. Its report condemned unreservedly the penny a day system, which it said, gave rise to unhealthy competition between teachers and led to the ~~mixing~~ degradation of the profession of schoolmaster, whose salary had fallen below that of a working mechanic and sometimes below that of a common labourer. It could not be administered successfully in the country districts. It recommended therefore that the system should be abolished. (66)

At the end of the period therefore, majority opinion in the Legislative Council favoured a return in some degree to an undenominational system of education for the colony.

(65) Denison to Grey, 25/4/48.

(66) Report of the Select Committee of the Legislative Council investigating the working of the Schools System: V. & P. 1853.

Chapter IV

The Old Legislative Council

Between 1842 and 1856 no branch of government in Van Diemen's Land underwent more change than the Legislature. For these years saw the breakdown of the nominee system and the substitution, after an unsuccessful attempt at compromise in the form of a blended house, of the principle of representation, which came to be embodied in a two chamber parliament.

What for the sake of convenience may be called the Old Council took its origin from the Act of 1828 which was passed to make certain alterations in the constitution of New South Wales. (1) One reason given for these changes was the desire to get more adequate representation of a rapidly increasing population, and to this end it was laid down that, instead of a minimum of five and a maximum of seven members, the Council would consist of at least ten and not more than fifteen. When interpreting this measure to Arthur, the Secretary of State explained that the Council would be "fairly selected from the more intelligent, wealthy and respectable members of the commercial, agricultural and professional bodies of the colony". (2)

Full legislative authority was vested in the Council by the Act of 1828. But there was an important limitation. An Act of Council could be declared invalid if found to be repugnant to any existing statute or to the Common law of England. As the Secretary of State

(1) c.f. Statutes 4 Geo. IV c. and 9 Geo. IV c. 83.

(2) Murray to Arthur, 31/7/28.

interpreted it,"the general principles of the law of England must be followed..... except when local circumstances imperiously demand some departure from them."(3) Whether an act was repugnant or not was a question, in the first instance, for the Supreme Court to settle. But to avoid a continuation of the disputes between the Executive and the Judiciary that had embittered relations in New South Wales, the Act of 1828 obviated the necessity of securing the Judge's certificate to make a colonial act valid. Forthwith the rule was that within seven days the act had to be sent to the Supreme Court for enrolment, and the Court had a further seven days to raise objections to it on the ground of repugnancy. If declared repugnant by the Court, its decision had to be considered by the Council, which could adhere to^{the} act while waiting upon the Royal Pleasure.(4) However, the Secretary of State thought it necessary to impress upon the Lieut. Governor at the outset that due weight must always be given to the opinion of the Chief Justice.(5)

During these years the Council consisted of fifteen members. Though the Lieut. Governor lacked specific instructions on the matter of composition, six of the members were invariably official and eight non-official, while the Lieut. Governor occupied the seat of

(3) Murray to Arthur, 31/7/28.

(4) In the forties the ~~Supreme~~ Council was called upon to consider a declaration of repugnancy made by the Supreme Court. For instance, in 1840 it was decided not to adhere to the Road Act declared repugnant by Judge Montague (V. & P. 5/12/40); while in the next year it did adhere to an act to build and maintain a bridge between Restdon and Derwent Park (V. & P. 28/10/41)

(5) Murray to Arthur, 31/7/28.

president.(6) In fact the Lieut. Governor was always in attendance during a session of the Council except for a brief interval when he left the Council Chamber to allow members, with the Chief Justice presiding, to frame the Address in Reply. The Act of 1828 made his attendance obligatory and gave him both an original and a casting vote.

The fact that the non-official members had a majority was not without constitutional importance. It meant that the Government had to retain the support of at least one non-official member to avoid a motion being carried against its will. Its importance was shown during the critical debates of 1845 when on several divisions seven ayes were ranged against seven noes and the President's casting vote had to decide the issue.

The six official members formed a bloc and represented the government. Certain office holders found seats on the Council. During the Franklin and Wilmot years and indeed to the end of the Old Council seats were occupied by the Chief Justice, the Colonial Secretary, the Attorney General and the Treasurer. The two other seats were filled at different times by the Archdeacon, the Senior Chaplain, the Collector of Customs, the Auditor, the Comptroller-General and the Chief Police Magistrate. The Chief Justice occupied a position in the legislature somewhat analogous to that of the

(6) In New South Wales following the Act of 1823 the Governor refrained from attending the Council in deference to the opinion of the Chief Justice. But this practice was not approved by His Majesty's Government which held that the presence of the Governor lent prestige to the Council, and gave open expression to the principle of responsibility.

Lord Chancellor in the British Parliament. His legal knowledge and his judicious approach to matters before the Council were of inestimable value in these years of institutional growth. However, though an official member, the Chief Justice was no longer a member of the Executive. The two senior executive officers ~~and the law officer~~ performed roles in accordance with the conventional practice of the British Parliament. All business was in their hands and no measure involving the raising of revenue could be introduced except by one of them.

The eight non-official members did not constitute an opposition in any sense of that term. They were there to advise the Lieut. Governor and as such were expected to represent a cross section of the commercial, agricultural and professional classes. They were selected on the grounds of intelligence, wealth and respectability. The actual selection was no mean task for any Lieut. Governor. The smallness of the community exaggerated the nature of cliques and every nomination gave rise to jealousy somewhere, if not to virulent opposition. However, when he reinstated in 1847 the six members who had resigned over the estimates at the end of 1845, Denison told the Secretary of State that they were to be preferred "from their talents, their position in society, and the situation in which they stand in the estimation of the public."(7)

Almost all the non-official members who were prominent in the constitutional conflicts of the 1840's were appointed by Franklin.

(7) Denison to Grey, 12/3/47.

Swanston and Fenton occupied seats from before 1840, while Kerr, Kermode and Gregson were there from 1842. The only important appointments made by Wilmot before the crisis of 1845 were those of Dry and O'Connor. Before "the six" were Anstey, Archer and M'Lachlan and after them came Leake, von Steiglitz and Allison. There is no doubt therefore that the landed interest was more than well represented. Even Swanston, banker and entrepreneur that he was, was interested directly in land. Dunn, who was head of the Commercial Bank and Orr, a Hobart merchant, were exceptions.

The Council Chamber was the Long Room in the newly built Customs House Building - now the Parliament House - and meetings were continuously held there until the modern period.(8) The place was central and removed from Government House, while the room itself was spacious and dignified. Meetings invariably took place in the afternoon, generally beginning at one o'clock and ending at three. On his arrival Franklin took immediate steps to give the widest publicity to the proceedings of the legislature. In his opening address to the Council the Lieut. Governor said he intended "to avail myself of the aid which may be derived from a discussion extended beyond these walls of the measures before us. With this intention I have made arrangements for the admission, to witness our proceedings, of such a number of colonists as the limited size of this apartment will admit of being accommodated. The result of this will, I trust, be such a thorough sifting of every point admitting of a difference of opinion as will tend most materially

(8) The Customs House was built ~~in~~ between 1832 and 1840; the Old Council
Ses. then between 1837 and 1856 and the House Assembly occupied what is now
the Members' lounge from 1856 to 1940.

to confirm us in the propriety of our decisions when they are right and on the other hand lead us at an early period to retrace our steps, should we occasionally wander into error." (9) The Press at once took advantage of this offer and their verbatim reports of the proceedings form the only detailed record that we have today.

The sessions of the Legislative Council were not fixed at any particular time of the year. Normally the Council met in July or August and after an adjournment of some weeks continued its work perhaps to November or even later. The extraordinary session of 1838 lasted throughout July and the first half of August and then from mid-October to the end of November. In 1840 and again in 1842 it sat continuously from August to November. Indeed Franklin was so impressed by the manner in which members had performed long and arduous duties during the 1840 session that when he called them together in the following year he promised that he would not keep them long. In 1841 the Council sat for a fortnight in June and through most of September. In 1843 there was no meeting until late in October following Wilmot's replacement of Franklin, and to make up for lost time the Council sat on 12 days during January. In 1844 it sat for six days in July and seven days in September. These were the only meetings in that year excepting one in November called specially to consider an act which had been declared repugnant by the Chief Justice. However Wilmot did call members together for eight days in the following February. In 1845 and 1846 the Council

met late in the winter and then in the spring, but after this time Denison, unable for many months to use his Council, which the Chief Justice said was not properly constituted, called it together when he could to deal with an accumulation of business. However, Denison returned to the more normal practice in 1849 when the Council met from late July to early September and then for five days at the end of October.(10)

An examination of the sessions, 1837-1849, shows that the Council sat on the average on thirty-two days each year.(11) But it would be more accurate to say that the Council sat regularly about twenty-four to twenty-six days. The average is raised by the fact that during the extraordinary session of 1838 there were no less than seventy-two meetings.(12) By contrast the Council met on only fourteen days during the depression year 1844. There can be no doubt that Franklin showed himself more disposed to work with and through his Legislative Council than any other Lieut. Governor in the period prior to the establishment

(10) V. & P. Legislative Council 1837-1849.

(11) The year 1847 is omitted in this calculation. During that year the Council was adjourned after sitting only four days following the declaration of ~~the~~ Chief Justice Pedder that it was not properly constituted.

(12) This year was marked by optimism and buoyancy and the Council dealt with a whole spate of legislation. Some idea of the variety and importance of this legislation can be got from a consideration of the bills dealt with, e.g. Marriage Bill, Clergy Bill, Quarantine Bill, Customs Act Amendment Bill, Criminal Acts Extension Bill, Quarter Sessions Bill, Police Bill, Bill amending Laws relating to Burglary, Robbery and Forgery, Prohibition of Distillation Bill, Bill for the Paving and Lighting of Hobart Town and Launceston, Van Diemen's Land Insurance Company Bill, Union Bank Bill, Dollar Bill, Debtor and Creditor Law Amendment Bill.

of responsible government. Not the least important of his achievements was the way in which he gave vigour and prestige to a growing institution. By encouraging freedom of discussion both inside and outside the Council he did much for the development of the political life of the Colony. After he had been succeeded by Wilmot, but before he had left the colony, Gregson moved an address, as a mark of appreciation of this side of Franklin's work. In it he recalled that during the period of his office "the utmost latitude was permitted" in debates in the Council, and "in no instance were they checked in the expression of their opinions or controlled in their judgment." (13)

The proceedings of the Legislative Council were conducted in accordance with rules which were either laid down by Statute or embodied in the Standing Orders. Whereas the Act of 1823 had made no reference to rules of proceedings, the Act of 1828 specified certain basic rules. In the first place the Council was competent to act only when two-thirds of the members, excluding the President, were present in the Chamber. This rule was invoked on more than one occasion in the forties. Whenever a count, taken at a quarter of an hour after the hour of convening, showed that less than ten members were present the Council had to adjourn. The rule was invoked by the six non-official members on the 30th day of October, 1845, when they left the Council Chamber abruptly to obstruct the passage of the Appropriation Bill, thereby precipitating a first class constitutional crisis.

All measures had to be introduced by or in the name of the Lieut. Governor, but notice of at least eight days had to be given

in the Press unless there was an emergency.

The will of the majority, whether affirming or dissenting, was to prevail according to the Statute. Moreover a member whose proposal was unacceptable to the Lieut. Governor had the right to forward a copy of his proposal and to enter his protest in the minutes. In fact any member who dissented could have the reasons for his dissent recorded in the minutes. (14)

The Council had its own Standing Orders which were added to from time to time. One set of orders was issued in 1833. In 1840 a committee of Council consisting of Macdowell, McLachlan and Fenton suggested additional rules governing Private Bills. (15) Again three years later a Rules Committee made up of Pedder, Swanston and Gregson drafted an amended set of Standing Orders.

The President decided disputed points of order, called upon members to speak and put the question. The members had to address the Chair while standing, could not speak more than once on any matter except by way of explanation or in committee, but could move the adjournment at any time and, if seconded, could divide the Council.

The procedure followed in respect of legislation was the traditional British usage adapted to the circumstances of the colony. Bills were printed and distributed to members at least three days before they were tabled in the Council. The First Reading took the simple form of the Clerk reading the title, after which the official member who was in charge of the Bill moved that it should be read

(14) 9 Geo. IV. c.83.

(15) Legislative Council Papers, 1842. Report dated 16/9/40.

a second time on a certain day. The same procedure was followed at the Second Reading stage. But then it was moved that the Bill should be committed. At this stage members could propose amendments in writing, which, if accepted by the Committee, would be reported to the Lieut. Governor to be embodied in the Bill. At the Third Reading, the amended Bill was read in full, there was no discussion, and the only question put was "that this Bill do pass". However, this procedure could in an emergency be accelerated and standing orders suspended to allow a Bill to pass all stages at one sitting.

Financial Bills followed a procedure similar to other Public Bills. Usually revenue was raised under separate Bills, such as the Port Dues exemption Bill and the Increase of Duties Bill, 1845. The estimates for the following year were introduced in a Minute by the Lieut. Governor generally not later than September. The Estimates were considered in detail in Committee and then the Appropriation Bill was introduced and passed through all stages in one day, following the suspension of standing orders.

If a member wished to get a Private Bill adopted he had first to bring a petition before the Council, which could refer it to a Committee for examination. If the Committee was satisfied, it could report to the Lieut. Governor who might then introduce a measure which would satisfy the petitioner.

The Lieut. Governor normally presided in Committees of the Council. Special sub-committees were appointed by him and in these the senior member took the chair. All reports of such committees had to be signed by approving members.

The most responsible official of the Council was the Clerk. He kept a book in which he entered the Orders of the Day. He had prepared the text of Bills, read out the titles in the Council, kept a Journal of all its proceedings, including the minutes of Committees and had published a weekly abstract of its Votes and Proceedings in the Government Gazette. During most of these years the office of Clerk was held by Adam Turnbull.

Once the Council had convened at the hour set down, the Clerk at once counted the members and if a quorum, which was ten, excluding the President, were present the Council proceeded to business. It was the usual practice to read the minutes of the last meeting, after which petitions, if any, were presented. Someone moved that a petition should be heard. Notices of motion followed immediately after petitions. No motion could be introduced, except for a ^d/journment or in committee, without previous notice of at least one day. After notices, came questions. Once the Council began on Orders of the Day no further questions or notices of motion could be brought up. Normally the business was taken strictly according to the Orders.

If this was the normal routine at meetings of the Council, the opening of the Session was marked by an Address of the Lieut. Governor in which His Excellency took the opportunity to review the state of the Colony, drawing attention to the economic trends and informing the members of the proposed legislative programme that would be put before them during the session. When he had finished someone, usually a non-official member, moved that the Address be

printed. The lieut. Governor then left the Council Chamber, and, with the Chief Justice in the Chair, the Council prepared and moved the Address in Reply.

On one other occasion in the session the Lieut. Governor spoke at some length. This took the form of a Finance Minute, which was a review of the fiscal position in preparation for the more detailed consideration of the annual estimates.

A good picture of the economic trends within the Colony can be built up by perusing these Finance Minutes year by year. In his first Address to the Legislative Council in 1837 Franklin said, "the prospects of the Colony continue to be flattering".(16) A year later, however, he noticed that, although trade was increasing, the customs revenue had declined, due probably to the increase in distillation of spirits within the Colony. This development it was sought to remedy by an Act of Council prohibiting such distillation. But returns from land sales had declined too, which was accounted for by the fall in wool prices and the competition of free land in Port Phillip.(17) Yet by the middle of 1839 there was a note of optimism in the air. Customs returns for the first half year showed a sharp rise as did Post Office receipts. True, the fever of speculation had not developed and land sales were still below the average for the decade.(18) But the boom was well under way in 1840 when Franklin congratulated the members on "the steadily increasing prosperity".(19) Members too were in the mood to move for a

(16) V. & P. 10/7/37.

(17) V. & P. 30/6/38.

(18) V. & P. 6/6/39.

(19) V. & P. 17/8/40.

substantial increase of the Lieut. Governor's salary - which Franklin incidentally was prepared to forgo - and to sanction the building of a new and more dignified Government House. Moreover prosperity reigned even into the following year when the revenue reached the staggering figure of £60,000 above the estimates. However, Franklin's head was not turned by this fortune and he spoke soberly of how this amount had been obtained "by my having sacrificed many pressing wants for Public Works in every district to the higher and more important object of importing labour". Nor did he fail to notice the contraction of the money market.(20) The boom was over.

When he address^{ed} the Council for the last time on the financial condition of the Colony, Franklin looked back on these extraordinary years with philosophic calm. He regretted that most of the purchases of Crown Lands had been made from borrowed capital, most of it owned by residents of Great Britain, to who interest had to be paid, and spoke of the depreciation of land and stock, but he had "no fear for the future". The recent rains, the abundance of labour, both convict and free immigrant, and the new monetary stability, now that the speculative fever was over, could contribute to a renewal of confidence and well being.(21) What he regretted, above all, was the postponement of important public works, such as the construction of a water supply for Hobart Town and Launceston, and the delay in the reassessment, long overdue, of the salaries of public servants.(22) These plans he left to his successor.

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- (20) V. & P. 19/6/41.
(21) V. & P. 24/8/42.
(22) V. & P. 5/9/42.

The Finance Minute was not presented till the end of November in 1843 and the Appropriation Bill was passed only in the new year. Wilmot had to face financial trouble from the start. The revenue for 1842 was more than ten thousand pounds below what had been estimated, while expenditure had been underestimated by close on eleven thousand pounds. He had to call for supplementary votes to make up the deficit. Severe all-round retrenchment was the order of the day.(23)

Six months later, when the Council met again, the situation had further deteriorated. "The interval since we last met," said the Lieut. Governor, "has been one of trial and perhaps of gloom." He thought the time had not come for arriving at accurate conclusions as to the causes and results of the depression. But he was not without optimism; "I believe a brighter day is now breaking for us". People were too ready to compare existing conditions with "the former period of prosperity, created by fictitious causes " and this was "a false standard of comparison". Apart from the fall in the wool prices, the low grade of wheat contributed greatly to aggravate the depression, and to remedy this he looked forward to a steady market for the colony's wheat in the Mother Country.(24) Unfortunately his hope was not to be realised.

The excess of expenditure over revenue caused him anxiety, and made necessary further reductions in offices and establishments. The revenue for 1843 had fallen £11520 short of the estimates and

(23) V. & P. 20/11/43.

(24) V. & P. 17/7/44.

expenditure had been underestimated to the sum of £1742. He warned that the revenue for 1844 would not be realised, as customs returns were disappointing. The greatest falling off, however, was in land sales which from £58,443 in 1840 had dropped to £2000. In short, the colony was failing increasingly to make ends meet, and this despite the fact that trade had been maintained and even increased. In the circumstances, the Government would be obliged to budget for a deficit of £30, 613, and to make it up by dint of borrowing. For the first time the Lieut. Governor was outspoken in attributing some of his financial problems to the convict policy of the Home Government. "The separation of the Convict from the Colonial Departments has thrown upon the Colony several charges which were mixed up between them." Such, for instance, was the employment of ticket-of-leave men and passholders in the Colonial service at an expense of £17,646.(25)

This was the situation that led in the following year to growing differences between the Lieut. Governor and most of the non-official members, which, when openly fanned by certain elements of the Press and with a public opinion thoroughly roused, led finally to a major constitutional conflict. But before tracing the stages leading to this conflict it would be helpful to look more closely at the rise and fall of both expenditure and revenue in the years, 1837-1844.

The expenditure rose about twenty five per cent from approximately £120,000 in 1837 to £150,000 in 1844. It had risen to £185,000

in the peak year 1842 and then steadily dropped. One specific cause of these increases is to be found in the immigration policy of the Government which, under Franklin, was designed to encourage the bringing out of free settlers. To this end the Agent General worked busily in London with money advanced by the Lords Commissioners of the Treasury who had to be repaid on more than one occasion by a supplementary vote passed subsequently by the Legislative Council. The ambitious immigration ~~xxxxx~~ plans endorsed by the Council in the years of the boom were something of a drain on the Colonial Treasury once the boom had passed.

The expansion of departments serves regularly to augment expenditure. But it would be wrong even to suggest that in these years the Government indulged in an expansionist ~~policy~~ programme. The men who ran the Government, from the Lieut. Governor down, were too much the disciples of Bentham, Ricardo and McCulloch for that to happen. Rather did they spend time retrenching on a certain project here or pruning an establishment there. Even so time and events were against them, and in a growing colony roads and bridges had to be built, lighthouses constructed and equipped, and water schemes provided. In the years of prosperity and optimism the demand was irresistible.

Then again the separation of the Convict and Colonial Departments did lead in dozens of ways to an increase in charges on the Colonial revenue made in answer to convict purposes. This Wilmot recognised in his Finance Minutes on 1844 and this is what drew the fire of Dry

Fenton and others. The adoption of the Probation System accentuated this development. For instance, the Commissariat Department, on instructions from the Lords Commissioners of the Treasury, refused to be responsible for the issue of rations to Colonial Departments and, in consequence, the Accountant of Stores had to handle the additional burden. This meant an increase of two clerks. In the Marine Department passholders had to be hired to work the boats in lieu of convicts, for whom heretofore the Colony had paid for rations. Most of all, the expenses of the gaols, police and judicial establishments were, in Wilmot's words, "greatly disproportionate to our population and revenue". And he added, "the colony has provided for religious instruction more liberally than the present state of its finances admits of" (one sixth of the colonial income). "There can be no doubt that the presence of a convict population has imposed upon the colony the necessity of this apparently disproportioned charge." (26)

The colonial revenue rose rapidly after 1838, but after the boom fell just as rapidly until in 1845 it reached approximately the figure of 1836. The sources of this revenue were, in order of importance, customs, land sales, licences of various kinds, fines and fees and Post Office receipts. Of these customs formed by far the most important, accounting in most years for almost three quarters of the whole. The Government was sensitive to any decline of revenue from this source. In 1838 an Act was passed, not without

(26) Finance Minute, V. & P. 1844.

much public protest, prohibiting distillation of spirits within the colony on the ground that it was causing a decline in customs duties. In 1845, as a measure to meet the deficit, Wilmot proposed, again not without great public protest, a measure to increase the ad valorem duties on foreign goods. In the same minute he warned of the increase in smuggling since New Zealand had thrown open her ports to free trade, and of the prevalence of illicit distillation within the colony.-(27)

If on the whole receipts from Customs were maintained at a steady level those from the sale of Crown Lands fluctuated enormously. The receipts during the nine years to 1841 averaged £23,000 a year, after the cost of immigration had been paid. In 1840 they reached £52,900 and in 1841 £47,200.-(29) In 1844 receipts barely reached £2000 after immigration costs had been met. It was at this point that the ambitious immigration plans endorsed in the years of prosperity brought headaches to the government officers. It was above all from this source of revenue that the Colonial government was expected to derive the wherewithal to meet the expenses of the departments of Police and Gaols. More than any other factor the drying up of this source led to financial difficulties and precipitated the crisis within the Council in 1845.

Licences were of various kinds, the most important being those of publicans. Fines were levied in various courts and fees were taken by the Registrar of Deeds and the Commissioners of Title.

(27) V. & P., 19/10/38.

(28) V. & P., 19/ 2/45.

(29) *ibid.*

fees fell off after 1841-2, "years in which the greatest number of lawsuits was brought". Similarly there was a reduction in the number of convictions, - most convictions were for drunkenness - as well as in the average amount of the fines imposed.(30) Only Post Office receipts showed a steady increase.

There was a disinclination to tap other sources of revenue. When Gregson suggested the levying of one penny a pound on all wool exported from the Colony, the proposition, to the amazement of Mr. Auditor Boyes, "was neither assented nor demurred to and it passed off without a remark".(31) Then again Wilmot's moderate proposal to further irrigation by the use of convict labour, the cost of which would be met by a rate of one and sixpence in the pound, met with strong opposition.

In framing its economic policy the golden rule for government at this period was to live within its means and every year to balance its budget. Any departure from this rule was likely to call forth a reprimand from the Secretary of State. An example of this was when young Gladstone, who had recently been appointed to the office, took Wilmot to task for his reliance on supplementary votes. Her Majesty's Government considered Wilmot's explanation of the excess of expenditure over income quite unsatisfactory. The financial embarrassments of the Colony were attributed by the Treasury to "the absence of system in the management of public resources". The Secretary of State desired once more to impress upon the Lieut.

(30) Legislative Council Papers, 1849 for two Reports of Board of Inquiry into Fees of Public Departments.

(31) Boyes' Journal, 17/8/45.

Governor " the necessity of strictly confining the expenditure within the amounts voted by the Legislature." Gladstone then concluded with the warning that "Her Majesty's Government, after the repeated intimations that you have received, would view with serious displeasure any fresh instance of an excessive expenditure over the estimates and any legislative appropriations of the year."(32)

In reply to this Wilmot recalled what had been the past procedure in preparing estimates. There were miscellaneous items, part of the annual expenses of government, which "being uncertain in their nature and extent are left to be liquidated by a supplementary vote". Between 1836 and 1843 such votes had amounted to a total of £124,000 or to an average of £15,500 a year. All this was authorized expenditure, differing only in that the Legislature authorized it after rather than before it had been incurred. Besides the possibility of unforeseen expenditure ~~remained~~ remained, arising as it did, he said, quoting the Colonial Treasurer, Peter Fraser, "from unforeseen demands of the Colonial Agent, the Commissariat, the increasing expenses of Police and Gaols and Public buildings, none of which could be accurately estimated beforehand"(33)

Most striking in all this is the refusal of the Colonial Office to recognise the political and social situation within the Colony that had been revealed repeatedly in despatches and in the Votes and Proceedings of the Legislative Council. Little wonder that Wilmot

(32) Gladstone to Wilmot, 14/3/46 and 20/4/46.

(33) Wilmot to Gladstone, 24/8/46.

in one of the last of his official despatches reminded Gladstone of the reductions in expenditure that he had made each year in order to balance the budget, and asked that the censure should be withdrawn.(34)

In his embarrassment Wilmot resorted to borrowing, a practice which brought upon him additional censure. In 1844 he reported to the Legislative Council that he had borrowed £39,000 from the Military Chest and would probably have to borrow a further £15,000. Of the first sum £11,000 had gone in aid of convict funds and £5,000 to meet the expenses of immigration.(35) In the extraordinary session early in 1845, his proposal to borrow £25,000 from the Commercial Bank was carried through the Council but only after a division, with nine for and four against, while Dunn abstained.(36)

The members of the Legislative Council were made fully aware of the financial difficulties of the Colony, and it was on the question of financial policy that there developed differences between the Government and some of the non-official members. These differences did not appear overnight. Their origin is to be sought in the years before Wilmot came to the Colony, though it is true that they were accentuated during the depression years and were not made easier by Wilmot's conduct toward certain members, official and non-official alike.

As early as 1837, during the debate on the estimates, Swanston proposed, seconded by Anstey, that two-thirds of the expenses of the

(34) Wilmot to Gladstone, 25/9/46.

(35) Financial Minute 1844, 23/7/44.

(36) V. & P. 21/2/45.

Police Department should be defrayed by Her Majesty's Government. This amendment was lost only on the casting vote of the Lieut. Governor. A similar amendment was lost in the same way in the following year, though a resolution calling upon Her Majesty's Government to meet most of the expenses of the Police Department was carried unanimously. In 1839 it was again resolved that two thirds of the same vote should be a charge on the Home Government.(37) As he thanked the members at the end of the session of 1840, Franklin said on this point, "I recognise the fairness of your reasoning: and I shall not fail to point out to the Secretary of State my concurrence in the principle by which your decision has been guided."(38)

In 1841 Ashburner entered a protest in the Minutes of the Council against the whole charge being defrayed from Colonial funds(39) Next year the protest was more strongly worded, describing the charge as "impolitic and unjust", unjust because it forced upon the Colony for purposes purely beneficial to the Mother Country and impolitic because, being unjust it tends to destroy that confidence that ought to subsist between the governed and their rulers and weakens that attachment that should bind the Colony to the Parent State." Moreover, "the cessation of assignment, having deprived the Colony of the labour of the prisoners, ought to throw every expense attending them on Great Britain, which is sufficiently fortunate in being rid

(37)V.& P., 20/7/37, 12/7/38, 18/7/38, 14/6/39.

(38)V.& P., 5/11/40.

(39)V.& P., 22/6/41.

of the contamination it forces on our shores." The protest was signed by Ashburner, Anstey, Kermode, Archer and Kerr.(40)

Finding it impossible to make ends meet Wilmot had his own reasons for protesting. He found the expenses of Police and Gaols "greatly disproportionate to our population and revenue" and referred the whole question to the Secretary of State. But the Secretary of State's reply was already on its way. On the question of the Home Government re-assuming the responsibility for the cost of maintaining the Police and Gaols Departments, Stanley was curt. "You must dismiss from your mind," he said, "all expectation that Her Majesty's Government will consent to any such arrangement."(41) Wilmot drew attention consequent upon the separation of the Convict from the Colonial Departments, to "the charges that were mixed up between them."(42) Shortly afterwards Fenton asked that returns should be tabled showing what sums had been paid out of the Colonial Treasury within the last two years for convict labour, tools clothing and food and showing too what work had been done. Then he moved for the usual reduction in the vote for the departments of Police and Gaols. A few days later he returned again to the charge supported by other protestants, namely Kermode, Dry and even O'Connor, whose absence from his seat in the critical debates of the following year was to bring about his ears virulent abuse from "the Opposition Press". The probation system was condemned outright.

(40) V. & P. 8/9/42.

(41) Stanley to Wilmot, 22/9/43.

(42) Finance Minute 1844, V. & P. 23/7/44.

Far from bringing the cheap labour that was needed, it actually dumped the agricultural products of convict labour on the free market. It made for "a high rate of wages for the most inferior description of labour". Whereas in England seven to eight shillings a bushel was the average price of wheat, its market value in the Colony was only three to four shillings. Besides "in England the roads were excellent, the conveyance rapid, and the markets certain, whilst here everything is reversed. There discounts range from one and a half to three per cent, here they are from six to eight times as much.. Beyond all this "agricultural interests have been sacrificed in the prohibition of legal distillation to raise fictitious revenue whereby the Colony is drained to the extent of £60,000 a year in purchase of foreign ardent spirits". Finally Fenton moved for a reduction in the rate of interest, finding the existing rate so exorbitant as to prevent any hope of economic recovery. To those disciples of laissez-faire in government offices he protested vigorously "that the theory of free trade in money is not founded on a substantial basis, but on a speculative theory, and found wanting in practice."(43)

When the Council met for the extraordinary session in February 1845, it was soon obvious that the opposition to the financial policy of the government was stiffening. In the spring the Lieut. Governor had appointed a Finance Committee, but when it reported it made only trifling recommendations.(44).Wilmot decided to take

(43) V. & P. 23/7/44, 29/7/44.

(44) Legislative Council Papers 1845.

positive measures to increase the revenue. He moved at once to increase customs duties and to repress illicit distillation. The first measure aroused loud public protests from organized groups within the community, and a number of petitions were presented protesting against the proposed increased duty on sugar and tea. An attempt made by Fenton and Gregson to delay the Increased Duties Bill for six months was defeated on a division of three ayes and eleven noes. Fenton and Dry then sought to have brought in a Bill permitting the distillation of Colonial grain. This motion also was lost, with five for and eight against. Again when a bill was introduced to provide for irrigation with the help of convict labour opposition was raised to the proposed levy of a rate of one shilling and six pence on those land which would benefit. But Gregson's amendment was defeated and the measure went forward. Then Fenton moved an amendment to the motion that the Government be empowered to borrow £25,000 from the Commercial Bank. He quarrelled with this policy, arguing that the British Government, which was in a position to borrow at lower interest on the London money market, had a responsibility in face of the growing Colonial debt.(45)

When this short session, which had occupied six sitting days, came to an end, little enough had been achieved. At least four of the non-official members stood more fixedly in opposition to the government and were resorting more to obstructionist tactics.

(45) V. & P. 19/2/45, to 28/2/45.

It was becoming clearer that, if these men became resolved on a policy of no compromise, nothing could avert dissent within the Legislative Council, and perhaps a head-on collision between them and a Lieut. Governor who, at all costs, was determined to carry out the instructions of Her Majesty's Government. In the ensuing months, when the Council was not sitting, the rift was to become wider, and leading colonists were to be filled with moral indignation by a scurrilous and partisan press.

Almost five months elapsed before the Council met for its regular session at the end of July, 1845. It may be asked was not Wilmot singularly unwise in not calling it together before then. He met this criticism in a letter to Stanley by saying that the Chief Justice was unavailable before that date, and that time was necessary to enable the Executive Council to deliberate fully upon a programme before it was presented to the Legislature.

The Lieut. Governor's despatches to the Secretary of State during these months scarcely made mention of the crisis. His correspondence was taken up almost entirely with convict matters, such as recommendations for pardons and tickets of leave, the reports of the Comptroller-General and the quarterly returns of convict expenditure forwarded by the Deputy Commissary-General. There was one other item, which was becoming more serious every day. Bishop Nixon had refused to ordain a certain religious instructor appointed to serve in the Convict Department, and differenced between him and Wilmot on the question of constitutional powers became so

the repair of roads and bridges, the cost of

serious as to lead almost to a breach by the end of the year.

Wilmot's anxieties were in no way relieved by sympathy and encouragement from the Colonial Office. Indeed the Secretary of State showed himself blind to the situation and unfeeling to him as a man. Wilmot had considered wiping off all arrears of payment of Quit Rents, but he was now informed that this was disallowed. In another dispatch Stanley deprecated the way he had borrowed from the Military Chest, which he had done, not to finance any public works, but simply to keep the government going.

Amid growing difficulties then Wilmot turned finally for advice to his Executive Council. Three meetings were held in late June and early July. Business consisted entirely of the estimates, and all members were present. After a preliminary survey, during which he reminded his advisers how he had reduced expenditure since he arrived, by stopping the building of the College and reducing the Caveat Board among other things, the Lieut. Governor called upon the Colonial Secretary to explain his scheme for balancing the budget. Bicheno thought that reductions had gone almost far enough "without actually breaking up permanent institutions". To him the solution lay rather in a transference of public duties to other bodies, which should have their own sources of revenue. In other words, he wanted to see a development of local government, and a lessening of the all-prevailing habit of looking to the central government for support and assistance. "Local units," he said, "should be provided for by local taxation". The locality should be made responsible for the repair of roads and bridges, the cost of which should be met

at least in part, by leveying tolls at turnpike gates. This would relieve the Road Department of the expense of £6,000 a year. He went even so far as to suggest that the local units should raise a rate for police purposes.

These recommendations were not received with any enthusiasm. Though finding some of them good, Wilmot pronounced them quite insufficient. There was a deficit of £25,000 to be met, and now that Lord Stanley required the debt to the Commissariat Chest to be repaid, the situation was indeed desperate. "The police charge ~~xx~~ remains, but the land fund has ceased to exist. This is the sole cause of all our embarrassment. We have done the best the circumstances would permit to prevent it. The debt which has been incurred was inevitable. If it had not been incurred, the Public Officers must have been deprived of bread, the public credit have been destroyed, and something like a disorganization of the government have been produced.... When the disease is mortal," he went on, "it is necessary that we should cut deep." He therefore proposed a reduction of twenty five per cent of all salaries in excess of £200.

The Lieut. Governor's drastic remedy still further dampened the spirits of his advisers. The Colonial Secretary, the Colonial Treasurer, The Chief Police Magistrate and the Lord Bishop were alike opposed to such severe cuts. Bicheno put forward further suggestions for an increase of the revenue of the Colony. These included an increase in license charges and a stamp duty on Bills of Exchange, Bank Notes, Bonds, Mortgages and Securities. The

increased taxes would yield £14,000, and the stamp duty £11,000, while certain pruning of departments would save a further £17,000. Above all, he insisted that the budget should be balanced, if the Government wished to retain its credit with the banks and offer debentures to the public; after which "the estimates when once passed should be rigidly adhered to" and contingent expenditure avoided. The chief points made by the Treasurer were that the Treasury and Audit Office were already understaffed, that the drastic cuts were not yet necessary, and that Lord Stanley should be persuaded that repayment of the debt could be made only gradually. To the Chief Police Magistrate his staff were already overworked and underpaid. As for Bishop Nixon he was against new taxes as there was "a strong feeling prevalent in the Colony that taxation without representation is unconstitutional, and were any measures taken in opposition to that feeling they would undeniably tend to estrange the people from the Government, and upon Your Excellency the greater part of the odium would unquestionably fall." The Bishop's one positive proposal was that the estimate for schools should be reduced by £1,000, which should be met out of the parents' purses, but Wilmot met this with a sharp ~~reminder~~ rejoinder; "The vote for education is the last upon which I should be disposed to recommend any reduction."

On one point there was unanimity. It was held that the existing upset price of £1 per acre for Crown Land was much too high. For the rest, the discussion that had taken place during three meetings

of the Executive Council revealed a serious lack of co-ordination between members, who were responsible for framing and directing a policy to meet the emergency.(46)

Most serious of all, the Lieut. Governor seems about this time to have lost the confidence, and even the respect, of some of his senior officers. Boyes was particularly scathing, and went so far as to say he was unfit for his job. For, after insisting on reductions all round, he proceeded to exempt one of his nominees.(47) Besides, he gossiped too much to all and sundry, even to ladies, criticising, among other things, the business methods of his Colonial Secretary.(48) Moreover, if Boyes is to be believed, the senior officers discussed among themselves the scandals that were associated with the name of the Lieut. Governor,(49) and into such contempt was he bringing the institutions of the Colony that, when the Legislative Council eventually re-assembled, a Punch and Judy show was specially staged outside the Chamber by Anthony Fenn Kemp.(50)

The Legislative Council came together on the thirtieth day of July. In his opening address the Lieut. Governor spoke of the gradual improvement in trade and described the plans of the Government, including the drastic cuts in salaries and the increased duties and postal rates. At once the storm broke. For on the very next day at a Public Meeting, held in the Theatre under the chairmanship of

(46) Executive Council Minutes, 24/6/45, 1/7/45, 4/7/45.

(47) Boyes' Diary, 1/8/45.

(48) ibid , 16/3/46.

(49) ibid , 13/4/45, 23/10/45.

(50) ibid , 1/8/45.

Kemp, assisted by Chapman and Rowe, resolutions were passed protesting against the imposition of taxes by the Legislative Council. At the same time rival sections of the Press joined heartily in the struggle. The "Colonial Times", which claimed to be neutral and independent in its attitude, gave an exposition of the colonial system, ridiculing those who talked glibly about the unconstitutionality of "taxation without representation". It asked the Attorney-General "to call upon some opposition members to define in tangible form and substance what sort of government, in theory, and the method of working it in practice, they would be content with".(51) No doubt political thinking on the part of certain non-official members was confused. While resenting at all times any imputation of personal motives, they felt that, as adversaries of the Crown, they were bound to oppose a policy, which to them would entail the ruination of the Colony. To Wilmot and to most of his officers "the non-officials" were there to advise, not to oppose, and the hardening attitude of Gregson and his friends first annoyed and then outraged them. Boyes wrote in his diary about this time: "The Govnr. gave Gregson a lecture upon the manner in which he conducts his opposition and wound up by saying that Mr. Gregson was continually professing to render the Govnr. every support. If what had been already experienced was a fair specimen of the nature of the support the Hon. Gentleman meant to afford the Govt. Sir Eardley would prefer encountering his professed and

(51) Colonial Times, 15/8/45.

determined opposition."(52) To this gregson later replied by saying that his actions were consistant with the oath he took when he assumed the position of counsellor, swearing "to assist the Government in mking laws and ordinances for the peace, welfare, and good government of the Colony".(53) That a member could best assist the Crown by opposing the government of the day was a notion hardly understood by a generation of statesmen even in England who believed, in the words of ~~Ex~~ Wellington, that there was a serious difference between "willingness to serve the Crown if called upon", and pursuing "a course of measures which are to have for their object to force the administration to resign and the sovreign to call for the service of others".(54) To oppose the Government was to run the risk of being stigmatised as a member of a cabal or clique.

The first rumblings of opposition were heard during the deliberation upon the Statute of James Extension Bill and the Bill for the Lighting and Paving of Hobart Town. But when discussion began on the estimates the opposition was immediately declared. As a preliminary to any consideration of the estimates, Dry called for a committee to enquire into the amount of expenditure that had been made by the Colony for convict purposes. In support of him, Fenton reminded the Council that this was the third year that members had remonstrated with the British Government upon the injustice of paying for Police and Gaols, and he warned that, if the estimates could not be altered, members might walk out. Thus apprised of the

(52) Boyes' Journal, 15/8/45.

(53) Hobart Town Courier, 1/11/45.

(54) quoted by Keir, Constitutional History of Modern Britain p.407.

ultimate designs of "the opposition", Wilmot preferred to temporize, and following an equal division, gave his casting vote in favour of postponement.(55) But, on the following day, after the Colonial Secretary had argued that the Government was only administering, and could not interfere with, instructions, and the Comptroller-General declared that any inquiry would be useless, the Lieut. Governor cast his vote against Dry's amendment. Gregson then rose to move the adjournment on the ground that not sufficient time had been given for consideration of the estimates. Wilmot opposed any adjournment, upon which Swanston said he intended to vote against all the estimates and substitute one of his own.(56) So intransigent had grown the opposition that Wilmot announced the withdrawal of the estimates, promising to enquire personally into every department, and then to act according to the information he would obtain. He then adjourned the Council till 21st October.(57)

The Hobart Town Courier greeted the resumption of the session by referring to "the battle for justice and popular rights", and to "the inadequacy of the Colonial Office to fulfil its high and onerous duties". The despatches of Sir Eardley Wilmot remain unanswered".(58) Wilmot introduced the new estimates, which provided for a reduction in the Police, Ecclesiastical, and Education Establishments, and substituted a twelve and a half for a twenty five per cent cut in salaries. In a spirit of compromise he suggested the "repayment to us

(55) V. & P. 19/8/45: Colonial Times, 22/8/45.

(56) v. & P. 20/8/45: Colonial Times, 22/8/45.

(57) V. & P. 25/8/45.

(58) Hobart Town Courier, 22/10/45.

of expenses of trials of those convicts in our Supreme Court who are in no way employed for the benefit of the colony."(59)

The "non-officials" were, however, not prepared for compromise. Dry moved at once for the production of a balance sheet showing the amount owed by the Colony on the 31st December, 1844. He called at once for the appointment of a committee to enquire into the expenditure incurred by the Colony for convict purposes. He wanted, he said, to show the British Government that the convict system was the cause of the rapid destruction of the Colony and that the best free labour was leaving the state. The Colonial Secretary argued that the motion would embarrass the Government. For it was impossible to ascertain the cost arising in each department from the convict system, which was after all part and parcel of the constitution of the Colony. The Government had to carry out its duty, and it was the duty of Honourable members to advise the Government, not to throw impediments in the way. To carry the motion would lead to the adjournment of the Council without end was the argument of the Attorney-General. The Comptroller-General made certain observations on the benefits received by the Colony from the probation system. Finally, the Lieut. Governor summed up. The question was not whether the Colony was to have Representative Government; or whether it ought to cease to be a penal colony; or whether convict charges should be borne by the British Government. It was not for members to imagine that they could control the Government, and interfere with instructions from the Secretary of State. He went on to say that he was

(59) V. & P. 21/10/45; Courier, 25/10/45.

bound to lay the estimates on the table and carry out his instruction and this he was determined to do. In the absence of O'Connor, the division showed seven ayes, all non-official, and seven noes, including the Lieut. Governor's. On the Lieut. Governor's casting vote the motion was lost.

Gregson then arose, quoted the oath he had sworn when he took his seat, and proposed that the Council should adjourn ~~until~~ until every member was in his seat. The Colonial Secretary made the comment that there were no means to compel members to attend. Fenton wished "to relieve His Excellency from the odium of carrying an unpopular measure by his casting vote"; to which Wilmot replied tartly that he intended to use his casting vote whenever it was necessary. To Fry's request for an adjournment he replied, "On no account. O'Connor is ill. Someone else might be ill tomorrow and demand further adjournment." Kermode called out that O'Connor was washing his rams and with the temperature of the debate rising the motion was put and lost.

While expressing his regret for embarrassing the Government, Gregson then moved that the votes for the judicial, police and gaols departments should be cut out of the estimates. This also was lost. Dry called then for details of the last year's deficit of £20,000, and when Wilmot said it was not usual, he replied stubbornly: "But expedient!" At this the Colonial Secretary said he would answer question with pleasure, and the Auditor promised to prepare a statement. Yet another attempt to secure the adjournment failed,

upon which Gregson, Fenton, Kermode and Dry stood up and walked out of the Council Chamber. After a brief silence business was resumed the estimates were passed through the Committee without a division, the Council resumed its sitting and the Report was brought up. But at this point, as not sufficient members were present, Wilmot ajourned the Council till the next day.(60)

To all but the blind it appeared a crisis was now close at hand. On re-assembling next day Dry pursued the usual delaying tactics when he called for a full return of all expenditure incurred by the Police Department since 1835. But at last the Government was resolved not to be put off, and the Colonial Secretary moved that Standing Orders should be suspended to allow the Appropriation Bill to pass all stages. However, Gregson still had another card yet to play. He moved that the proceedings in Committee on the previous day were quite illegal. Once again feeling himself sidetracked and thwarted, Wilmot appealed to the Clerk of the Council, who explained that, though forty members constituted a quorum in the House of Commons, this rule did not apply to Committees of the House. The motion was then negatived, even Dunn voting against it. The debate continued.

During the First Reading Dry re-iterated his old objections and regretted the absence of requisite information. Finally, he moved as an amendment that the Bill be read again in six months. Tempers became frayed when he suggested that the six official members were

(60)V. & P. 28/10/45. Courier, 1/11/45.

bound, at the peril of their situations, to support the measures of the Government, and Gregson added that the Comptroller-General received £1,200 a year to maintain the Convict Department. Fenton, too, joined in a bitter attack on the convict system. But it all ended in the same way when the Lieut. Governor cast his vote against amendment. Still another motion of adjournment followed and was defeated. Then the Appropriation Bill passed on its way through the First and Second Readings.

Now at last the climax of the drama, that had been played through so many months, had arrived. All was set for the Third and final Reading, but before the Council could proceed, six members, by name Dry, Kermode, Kerr, Fenton, Gregson and Dunn took up their hats and left the Chamber.(61)

Even this was not quite the end. A little comedy scene had still to be played. When members were counted on re-assembling next day, it could be seen that, in addition to O'Connor, who had been absent through all these proceedings, four of the non-official members were not in their seats. The Clerk had to ~~announce~~ announce that there was no quorum. And at this point, Gregson, who sat alone with Dunn on the side of the Chamber usually occupied by the non-official members, said he wished to make a speech by way of explanation. But Wilmot had had enough. Curtly he referred him to the Clerk of the Council, and with the remark that never before had members risen before the Chair, he turned his back on him. The Council stood adjourned.

The final scene took place on Friday, 31st October, 1845. Briskly the Colonial Secretary moved the Third Reading. But he had reckoned without the irrepressible Gregson, who rose to question the legality of the proceedings with respect to the Bill, contending that the Lieut. Governor had no right to vote in Committee, in support of which he referred to legal advice supplied him by Francis Smith, Junior. In reply the Attorney-General questioned the correctness of his opinion. As for Wilmot, he was obviously disconcerted. That the Chairman of a Committee on the House of Commons could and did vote he had no doubt, but he was uncertain of himself whether he could vote twice in a Committee. Then when it seemed that the discussion would be protracted interminably, Gregson moved the adjournment. Once more the motion was lost on the casting vote. As if he were following carefully prepared tactics, Dry rose to read a minute only to be called to order. Next Gregson wished to move an amendment, and was told he could not. Not to be outdone he persisted by moving that the bill should be recommitted. Again it was lost on the double vote. But when Wilmot turned to proceed with the Third Reading the unofficial members withdrew and once more the Council had to be adjourned. (62)

This was indeed the end. On the Saturday morning Gregson, Dunn and Kerr turned up, but the rest did not appear. Before he left Kerr submitted his resignation. The others followed in the next few days.

(62)V. & P. 31/10/45, Courier, 1/11/45.

The six members who resigned their seats were in fact contending for more than they knew. As usual, amid the storm and stress of events, the chief participants were themselves unable to perceive clearly all the issues at stake. In the first place they were making demands which could be satisfied only with the granting of representative institutions. They took their stand as representatives of the Colony, and in the interests of the Colony they could do no other than refuse to pass the estimates. Rather than acquiesce in a policy which sprang direct from "Whitehall autocracy", they preferred to resign. But their actions went beyond even this. In taking their stand they had attacked the system, which, as the Colonial Secretary remarked, was part and parcel of the constitution of the Colony. Once again they hardly knew the goal toward which they were heading. Though disliking the probation system, many colonists, like these members, knew that the Colony owed much of its capital investment to money that came in through the Commissariat Chest. Nevertheless once the assault on a part of the system had begun there was to be no relaxation until the entire system of transportation was abolished, and in the next few years the demands for representation and for abolition were to become inextricably mixed up together.

Among the six, Gregson and Dry were sincere in their dislike of the whole system. Both men expressed that spirit of insubordination which is embedded deeply in the long British Radical tradition. Rebels by nature, they were imbued with those ideas which had been

gaining ground in the Colony for some years. There had come convicts from Canada who had shared in the rebellion of the thirties; and free immigrants who carried from Britain something of the spirit of the House of Commons that had met immediately following the Reform Act of 1832 and in particular the ideas of 'Radical Jack' Durham. The struggle in New South Wales between the Governor and his Council, two thirds of which was, since the Act of 1842, representative in character, was not lost on those colonists, who read the extracts from the Sydney Morning Herald.

Faced with this novel insurgent spirit was the Lieut. Governor Sir Eardley Wilmot, an English country gentleman of sixty years, who had sat in the House of Commons as Tory Member for North Warwickshire, and just as long had done his duties diligently as Justice of the Peace at the Quarter Sessions in the County. Sensitive by nature and possessed of a cultured mind, he was essentially a fair-minded man. Throughout this crisis, though he sympathised with much that his opponents were contending for and had sincerely at heart the interests of the Colony, he had not the elements in his character which enabled him to enforce discipline and he failed even to command respect, either among his own officers or in the Council Chamber in face of the "non-officials". In the protracted debates he showed a fatal lack of strength and resolution, permitted himself to be carried along by the tide, and struggled against it only when he became ruffled, or when his sensitive nature had been wounded; when, in fact, it was usually too late. But at all

times he was determined to do his duty, and to carry out his instructions. He was unswerving loyal to the man and the government that sent him out; a government which itself was soon to founder not least because it had failed to reconcile its political thought and its practice.

Meanwhile the reaction of the Press and the Public to the resignation of the six members was strong and immediate. Those who lauded their action acclaimed them as the "Patriotic Six". That they had banded together only for a patriotic cause was asserted by the Hobart Town Courier, which said they were "severed normally by violent prejudices and old fashioned animosities". It criticised Wilmot for preferring "to regard fair and constitutional opposition as a matter of personal disrespect". It branded O'Connor as one who had "failed in his duty to the Colony". It trusted that the vacant seats would remain unfilled.(63) Most acclaimed of the six was Richard Dry, whose journey north to Launceston went like a procession from Evandale and ended with his supporters dragging his coach in triumph through the city streets. Gleadow was deputed to read an address of welcome, and Dry himself spoke to the crowd from the balcony of the Cornwall Hotel.(64) When the Colonial Times criticised this speech, the Courier referred sarcastically to "His Excellency's Ally".(65) More rudely the Examiner advised the Lieut. Governor to fill up the vacant seats with third class probationers. On the other hand the Cornwall Chronicle at the outset

(63) Courier, 5/11/45.

(64) Launceston Examiner, 6/12/45.

(65) Courier, 17/12/45.

praised the members for their firmness, but thought their resignation was an injudicious step.(66) Later it stigmatised the opposition as a clique, ridiculed their claim to represent "the preponderance of talent, intelligence, wealth and worth of the Colony"; and dismissed "the low offensive trash of the Courier". This accusation of factionousness, which was partly shared by the Colonial Times in Hobart, was met by the Hobart Town Advertiser, which declared that "the opposition to the suicidal measure of government were not only not factions, but were without concert". This last journal began a campaign under the heading, "Legislation by Representation".(67)

The immediate question was who would fill the vacancies. The opposition press speculated upon likely appointments, and issued grave warnings to all possible nominees. After a month the Courier wrote, "The Gazette is fearfully and ominously silent"(68) Addressing himself privately to a number of colonists, whom he asked to serve as members in the Legislative Council, Wilmot said with reference to what had recently happened, "I always have and shall object to converting the Legislative Council into a Legislative Assembly, and instead of its being by law constituted a Council of Advice, to become a Council of Dictation". Despite the maledictions of some of his opponents he succeeded in filling the six vacant seats.(69) Steiglitz accepted, but only after he had tried to persuade Wilmot to readmit the six who had resigned. In this he had not been influenced by any person "except by a few who

(67)Hobart Town Advertiser, 4/11/45, 9/12/45.

(68)Courier, 3/12/45.

(69)Hobart Town Gazette, 24/12/45: dated at the Colonial Secretary's Office, 17/12/45.

are your friends".(70) In reply to the invitation Reed revealed how reluctant he was to accept on grounds of political ignorance, but if necessary, he was willing to sit.(71) To these two were added Bisdée, Driscoll, Leake and Hopkins.

~~The~~ The Lieut. Governor's trials were only beginning. While the press continued with cutting sarcasm, the "Patriotic Six" kept themselves in the public eye and addressed themselves to the Secretary of State through the Lieut. Governor(72) From the middle of December the Courier was talking openly of a petition to the Queen for his recall. On the 20th December, that is just prior to the announcement in the Gazette of the new appointments, there was a Public Meeting in the Victoria Theatre. It was convened by Burnett, the Sheriff and chaired by Kemp. Resolutions were passed declaring the Constitutional right of the colonists for Representative Government; bringing to the notice to the Home Government the undue expenses of the civil establishment and the inability of the existing Legislative Council to remedy them; and recording the indebtedness of the Colony to the six members who had resigned. A subscription list was started to defray the cost of printing and circulating the ~~xxxx~~ resolutions and a committee was appointed to carry them out.(73) In an editorial the Courier expressed "confidence that the people of England will not look on in silent acquiescence".(74) Early in February it reported

(70) Steiglitz to Wilmot, 22/11/45.

(71) Reed to Wilmot, 24/11/45.

(72) Wilmot to Stanley, 28/11/45: also 15/12/45.

(73) Courier, 24/12/45.

(74) *ibid* 3/1/46.

that a deputation of gentlemen had waited by appointment on the Lieut. Governor to place in his hands a petition to the Queen for an elective assembly. It was signed by more than three thousand people. Petitions addressed to both Houses of Parliament were dispatched by a ship leaving that day.(75)

At last in mid-February the long awaited despatches from London arrived, but to the disappointment of many, and not least the Lieut. Governor, there was no authority to transfer the expenses of the Police and Gaols Departments to the British Treasury.(76) More bitterly the Courier spoke of the alarming financial position of the Colony and reported that the Lieut. Governor had again "had recourse to the iron chest of the Commercial Bank (of course without the sanction of the Council) for another £7,000". This debt had mounted to £32,000. The debt to the Commissariat Chest was put at £75,000. And nearly £5,000 was due to Government officers for salaries.(77)

It may be asked why Wilmot delayed so long before he called the Legislative Council together at the end of March. He had consulted his Executive Council, and all its members had concurred in advising him to rely on the 1845 estimates and to wait awhile for the expected dispatch from Stanley in which he had promised to forward instructions about the financial policy of the Government.(78) When the despatches came they merely informed him that the Waste Lands Act recently passed by the British ~~Government~~ Parliament did not apply to Van

(75) Courier, 7/2/46.

(76) *ibid* 18/2/46.

(77) *ibid* 4/3/46.

(78) *ibid* Executive Council Minutes, 3/1/46.

Diemen's Land and that the Land Fund was to be used in the first place to meet the cost of Immigration as far back as 1842. If Wilmot had asked for bread, Stanley had indeed sent him a stone. The Executive Council now advised him to call together the Legislative Council to get authority to raise revenue to meet the accumulated debt and to maintain supply.(79)

In the reorganized Legislative Council Wilmot showed more energy and determination. The session was a busy one and its legislative achievement comparatively rich.(80) Most important however, was the Appropriation Act. Despite a steady return to trade prosperity the budget could be balanced only by reducing officers' salaries, by increasing customs duties and by borrowing. This kept alive the resentment and hostility that had reached its peak in the Spring. Wilmot's difficulties began again when Hopkins and Reed resigned their seats. "A sense of duty compels me to resign," wrote Hopkins three days after the opening of the session.(81) On being approached David Ogilvie respectfully refused Wilmot's offer. "I could not assist," he said, "in furthering the known and contemplated measures of government, while I believe the financial views of Lord Stanley, upon which they are based, to be unjust and oppressive."(82) The seats were filled by Allison, a landed proprietor

(79) Executive Council Minutes, 23/3/46.

(80) Bills were passed to abolish imprisonment for debt under £20: to exempt whaling vessels from port charges and wharfage dues: to amend the Law of Real Property: to enable the Government to procure a supply of pure water for Hobart Town: to restrain the increase of dog to restrain the practice of kangaroo hunting: to abolish certain differential duties of customs: to regulate the treatment of insane persons: to provide for the election of Commissioners for lighting paving and cleansing of Hobart Town: to build and maintain a bridge on the River Derwent near Bridgewater: for the better maintenance of the main road from Hobart to Launceston.

at Macquarie River and by Orr, a merchant of Hobart, and the composition of the Council was unchanged during the remainder of the Wilmot period. The opposition outside the Council became focussed more steadily upon the question of abolition, and secondly, though often linked with it, upon the need for representative institutions. While he was there Wilmot continued to resist these demands. When forwarding one memorial to Gladstone, who had succeeded Stanley, he commented: "The very existence of the Colony depends upon the labour of these Prisoners of the Crown." (83)

By August Wilmot's many difficulties were increasing and threatening to encompass him. More dispatches arrived from Gladstone, severely reprimanding him "for the absence of system in the management of public resources", and impressing upon him "the necessity of strictly confining the expenditure within the amounts voted by the Legislature". (84) Finally came, early in October, devastating in its nature and its timing, the letter of recall, together with Gladstone's private despatch, in which he referred to moral laxity. (85) This is not the place to relate the story of a notable event in the history of the colony or to discuss either the method of or reasons for the recall. These have been dealt with quite effectively elsewhere. (86) What had happened was in no way the direct result of the differences

(81) Hopkins to Wilmot, 27/3/46.

(82) Ogilvie to Wilmot, 19/4/46.

(83) Wilmot to Gladstone, 10/8/46.

(84) Gladstone to Wilmot, 14/3/46, 20/4/46.

(85) Gladstone to Wilmot, 30/4/46.

(86) See Kathleen Fitzpatrick's "Mr. Gladstone and the Governor",
Historical Studies of Australia and New Zealand. Vol.1. p.31.

between the Lieut. Governor and some members of his Legislative Council, but it was to have a direct and profound influence upon their relations in the near future. But to the constitutional historian the story of the Wilmot period came to an end on an ironic note. In one of the last despatches he received Wilmot was informed by Gladstone that Her Majesty's Government had agreed to meet two-thirds of the expenses incurred by the Department of Police and Gaols and to this end a vote had been sought in Parliament for £24,000, thus showing, in Gladstone's words, "an earnest of its anxiety to act in a spirit of liberal justice toward Van Diemen's Land, and will bring to a close a controversy which could not be continued without serious injury to the interests of the colony." (87)

But Gladstone showed a lack of understanding of more than one aspect of the situation in the Colony. He was optimistic if he believed there was going to be an end of the controversy. There was actually no break in continuity as Denison succeeded Wilmot. The former Lieut. Governor's problems were, in large measure, inherited by his successor, because they arose from the system that obtained in the Colony. In short, the early years of Denison read as a sort of postscript to the controversial story of the Wilmot period. For Denison also had worries concerning the membership of this Council and met opposition to the estimates inside it, while outside there was a growing demand for abolition of transportation and for the granting of representative institutions.

(87) Gladstone to Wilmot, 14/3/46.

When Denison arrived in Hobart, the Tory administration of sir Robert Peel had given way to the Whig administration of Lord John Russell. The new Lieut. Governor was quite early fortified with instructions from the new Secretary of State, Lord Grey. In his second despatch, while expressing his readiness to use "every practicable opportunity for safely extending to the British Colonies the system of self-government in the form of a representative legislature", Grey declared specifically that the six members, who had resigned, were free of the imputation of disloyalty and might therefore be used again.(88) To say the least, Denison was faced with a delicate situation. For some time after his arrival he seems to have maintained a discreet silence. But at the first official levee at Government House and again at the Public Funeral given to Wilmot, the Legislative Council was represented by the six members who had been recently appointed by the late Lieut. Governor. It was then with some surprise, therefore, that these members found themselves on the 10th March invited into a room, together with the six members who had resigned, and there heard Denison read the instruction from Grey, in accordance with which he was to choose six members from the twelve of them. When Driscoll suggested that he should have a free hand to choose members within the Colony, Denison reiterated that he was bound by the instruction of the Secretary of State. Then Gregson and Kermode announced that under no circumstances would any of the six who had resigned sit with

(88) Grey to Denison, 30/9/46.

the others. At this point the conference broke down. By next day Denison had made up his mind to re-instate the original six, preferring them, in his despatch to Grey, "from their talents, their position in society, and the situation in which they stand in the estimation of the public". It appears that the Hobart Town Advertiser published this news before the other six had received the official communication, which, to their chagrin, contained no mention of thanks for the services they had rendered. It is not surprising that they resented the "unceremonious" treatment they had received. For this they blamed not Denison, but his Executive Council. "He was entirely misled by timid advisers, who were terrified into the adoption of this expedient by threats and by the prospect of a Representative Assembly". They continued with the warning that "it has resulted in alienating the affection of a great portion of this community, while it has only sharpened the opposition of the restless and the turbulent". They concluded by recalling that they were men who were by their fortunes independent of government and not identified with politics, "but having come forward at a period of great emergency to serve the Government we naturally feel hurt at being abandoned to obloquy." (89)

It is difficult to avoid the impression that Denison handled the affair without even the elements of diplomacy. He was obviously sincere and indeed anxious to get on with his work, but it is

(89) Denison to Grey, 12/3/47 and 16/8/47: this last contains a long memorial from Leake, Bisdée, Steiglitz and Orr explaining the circumstances from their point of view. They give a sober account and there is no reason to distrust it.

evident that he did not bear in mind sufficiently the sensibilities of the men with whom he had to deal. The political world was new to him, and he was looking for a clear cut solution, dear to the heart of soldier and engineer. His approach to the first human problem he had to face was crude. As a result he was to lose many months in bickering and wrangling and to end by creating the very sort of opposition he wished most of all to avoid.

On the 24th March the Government Gazette announced briefly that Her Majesty had been "pleased to disallow the appointment" of the six members appointed by Wilmot. Actually Denison had received no authority for this beyond the initial instruction from Grey. Orr and Driscoll proved difficult, in refusing to vacate their seats.(90) The Council itself was not called together till late in July. It sat for only a few days. For then the Chief Justice expressed doubts as to the validity of the re-appointment of the six members, who had resigned, and faced with such uncertainty, Denison adjourned the Council.(91)

While awaiting instructions which would put the legitimacy of his Legislative Council beyond all doubt, Denison made plans for the abolition of transportation and for the establishing of representative institutions. Both of these important projects had been discussed in dispatches recently received from Grey. That they were in response to a growing need felt within the Colony continued to be shown by petitions and memorials addressed to him by leading

(90) Denison to Grey, 1/4/47.

(91) Denison to Grey, 30/8/47.

colonists.(92) These abolitionists asked that the Land Fund should be returned to the control of the Colony, and that 12,000 free emigrants should be sent out at the expense of the British Treasury. As for the convict gangs, they should be broken up, and the convicts sent to Northern Australia.(93) Other complaints were against the policy of transferring felons from Norfolk Island and against the continuance of the gang system.(94)

At the end of the year the Executive ~~Council~~ came into conflict with the Judiciary. The first stage of this conflict ended with the removal of the Puisne Judge, Algernon Montagu from office. Then the Chief Justice, Sir John Pedder, ruled that certain acts passed by the Legislative Council and approved by Her Majesty were invalid, being repugnant to the laws of England. Supported by his Executive Council, Denison was prepared to suspend even the Chief Justice. However, by this time his own position was strengthened by the receipt of the notification of the appointment of the original six members under the Royal Sign Manual. And so Swanston, Fenton, Kerr Kermode, Gregson and Dry once more resumed their seats.

The summer session was not a peaceful one. Faced by the consequences of the Chief Justice's decision in the form of a possible refusal by colonists to pay customs licences of various kinds, Denison sought to pass hurriedly through the Council an Act to remove doubts. This served to arouse the hue and cry within the

(92) Denison to Grey, 12/11/47.

(93) Courier, 8/5/47.

(94) Denison to Grey, 23/4/47.

(95) Denison to Grey, 10/1/48.

Opposition Press, and the Bill itself was carried through the Third Reading only by eight votes against six. The opposition of Gregson, Kermode and the others showed that little had changed since the notorious debates on the estimates on 1845.(95)

In handling this opposition Denison was less sensitive to criticism than Wilmot had been. Moreover, he was more self-assured, knowing as he did that Grey would give him every support. It was just as well, for he was to need every support. Fortunately for him prosperity was returning, and he could indulge his enthusiasm for constructive projects to an extent never possible for his predecessor. By June he could report the building of bridges over the Derwent at Bridgewater, over the Jordan at Pontville, over the Blackman River, over St. Paul's River at Avoca. A lighthouse was set up in Kent's Group. Repairs were being done to Public Buildings, including Government House. Both trade and population were on the increase.(96) As for legislation, he wrote confidently to the Secretary of State of news of the Bill lately introduced to validate Acts declared repugnant by the Judges.(97)

It was just as well, too, that he had such confidence in himself. For the next session brought more resignations. The loss of Swanston, he told Grey, was serious, because of the banker's long and varied experience, but he did not regret it, remembering his continuous opposition. He thought Kermode had resigned "with ^{the} a view of creating embarrassment and inconvenience", but, he went on, "his

(95) Denison to Grey, 18/2/48.

(96) Denison to Grey, 3/6/48.

(97) Denison to Grey, 18/3/48.

talents are below mediocrity, and he has always been a mere tool in the hands of others." As for O'Connor, he had resigned out of "personal antipathy to Mr. Gregson². His attempts to fill the vacancies were met with the refusals of Orr, Steiglitz and Bisdee. According to Denison they were all for personal and not public reasons. The seats were in the end filled by Leake, Allison and Sharland of New Norfolk.(98)

The new members were not pliant. Sharland carried a resolution protesting against transportation, which had been renewed, following the temporary cessation.(99) Leake and Allison, though not opposing the Estimates for 1849, or for 1850, did register separate protests on the ground that, as the cost of maintaining the Departments of Police and Gaols had increased, the £24,000 from the British Treasury no longer amounted to two thirds of the cost which as a principle, the British Government had declared itself ready to meet⁽¹⁰⁰⁾

Once again the real crisis came with the debate on the Estimates for 1849. The situation was, however, not identical with that of three years before. Denison displayed throughout a firmness, which on occasion bordered on truculence. His courage aroused a response in those sections of the community, which, for one reason or another, had little liking for the "Patriotic Six". Whereas Wilmot had had the majority of the press against him, the press was now more evenly divided. The Courier, for instance, had conducted,

(98)Denison to Grey, 15/9/48.

(99)Denison to Grey, 17/11/48.

(100)Legislative Council Papers, 1849.

since the early months of 1848, a slanging match with Gregson. When Swanston and Kermode handed in their resignations, there was no repetition of the fervour and acclamation that had greeted their earlier retirement. Not that the opposition was relaxing. As mentioned above, it continued with Leake, Allison and Sharland, but less ~~effectively~~ offensively.

Despite the intransigence of other members, Denison was determined to carry his Estimates. Since the moral victory of 1845 the notion that the majority held by the non-officials enabled them to refuse to pass the appropriation bill, had gained recognition among the opposition. All this was based on the interpretation of the 27th clause of the Statute 9 Geo.IV. c 83. Denison's interpretation differed from this. Somewhat to the surprise of Grey, he maintained that "should no appropriation be made the revenue is still the Queen's revenue, and may be appropriated as Her Majesty may be pleased to direct". Grey appeared inclined to accept the interpretation of Denison's opponents who accused him of "adopting a course knowingly contrary to the provision of the constitutional act". But, interpreting it as an emergency Grey was willing to back him up. He gave him the authority to dismiss those who objected to a bill of indemnification, advising him nevertheless not to use such authority if he could avoid it.

How different this was to Stanley's attitude to Wilmot! But Denison was not content. He thanked Grey for the authority, but did not expect he would be called upon to use it. What nettled him was Grey's failure to accept his argument concerning the Lieut. Governor's

powers. The Act of 1828, he wrote back, could be interpreted only in the light of conditions existing at that time. No attempt had been made to interpret the 27th clause before a circular despatch dated the 4th March 1832, the substance of which was included in instructions compiled by Stanley in 1843. According to these the Lieut. Governor was empowered to carry on with his estimates, if the Legislative Council refused to endorse them. He then gave a specific instance. In 1839 the Council cut out from the estimates the salary of the Colonial Agent, but on the order of the Secretary of State it had to be paid. In taking this firm stand before the Secretary of State, Denison concluded by saying that he had not consulted the legal officers on this point. "I conceived the instructions issued for my guidance as quite sufficient authority." (101)

So the matter ended. There were no more resignations, and no further retreats by the Lieut. Governor. At the same time he was not called upon to use the authority thus vested in him.

The sessions of 1850 and 1851 were quiet, in fact dull. Denison explained that he had hesitated to push forward with his legislative programme in view of the anticipated news of an Australian Government Act, one of the objects of which was the setting up of an elective assembly. Ever since his arrival in the colony Denison had shown himself interested in this development, and his correspondence with Grey on the matter of constitutional change had a direct influence on the final details of the Australian Colonies Government Act of 1850

(101) Denison to Grey, 15/9/48, and 25/10/48 and 16/7/49:

Grey to Denison, 3/1/49.

During these years by the effective way in which he pushed the claims of the Colony, Denison evoked the admiration of his friends and the respect of his opponents. The Courier spoke of "His candour and impartiality". He regularly tabled important despatches, thus keeping members informed about negotiation in Whitehall. He was ready at all times to supply official returns called for, particularly by Allison and Leake. There were no scenes in the Council Chamber. The main opposition came from Leake and Allison in the form of protests. The former continued to protest against the payment of judicial expenses for criminal trials. The latter argued that the payment of the debt of £60,000 owed by the Colony to the British Treasury was "against all equity". To substantiate this he calculated that the expenses of the Police and Gaols Departments from 1836 to 1845 amounted to £311,000, whereas the nett proceeds of the Land Fund in those years was only £207,000. This deficit of £104,000 was a direct result of the arrangement of 1834. In short, "it was British expenses which compelled the Colony to borrow British money".(102) When the Council passed Allison's resolution, Denison promised to press strongly upon the Secretary of State for a relief from this burden. As for those non-officials who had strongly opposed Wilmot, they were often found in divisions ranged on the Government side. Kerr and Dry were absent throughout the session of 1850, and even Gregson and Fenton were not always in their places. Moreover, Gregson had become unpopular with the pressmen, who reported often

(102) V. & P. 20/8/50, 22/8/50.

that his speeches were inaudible. Since he engaged on a physical fight with Thomas Macdowell he was assailed constantly by the Courier.

The last session began at the end of April 1851. The Lieut. Governor had at last received the news of the passing of the Australian Colonies Government Act. Members were now asked to give effect to the Act in the Colony. Fresh faces appeared. Since the last meeting Kerr had died, and Bichenq, the Colonial Secretary. The first was replaced by Bisdée. Then Peter Fraser had been made Colonial Secretary temporarily, while Dr. Turnbull took his place at the Treasury.(103)

Throughout the month of May members sat in Committee, dealing in detail with a Government Bill to provide for the establishment of a new Legislative Council, the division of the Colony into electoral districts, and the election of members to serve in the Council. After a recess in June, the Old Council met finally at the opening of July, and on the second day of the month the Electoral Bill passed all stages.

The Lieut. Governor then rose to make the concluding address. He spoke as usual with candour. He made no attempt to read a funeral oration over the body of the Old Council. "Although it is now about to be replaced," he said, "by an Assembly, constituted on principles more in accordance with those upon which the institutions of the Mother Country are founded, the result of its

labours, during a period of upwards of twenty-five years, has been such as to merit the gratitude of both the Government and the Community.

"My warmest acknowledgements are more especially due to those among the non-official members who, whether in conscientious opposition to, or in honest support of the measures proposed by the Government, have steadily and regularly attended in their places, and given to matters brought before them a full and careful consideration.

"These gentlemen have, by their conduct, clearly evinced that they at least appreciated the nature of the trust confided to them, not only as sworn advisers of the Crown, but as the legitimate guardians and advocates of the interests of the people."(104)

The Council then rose. A number of spectators was present, including Antony Fenn Kemp, who had been an original member; and as they filed out someone observed that the only Member of Council present at its opening - the Chief Justice - was absent at its demise. The Press made singularly little comment. The Advertiser gave a description of the last dull scene; the Cornwall Chronicle reported the end briefly and without prominence; while the Courier remarked rather unfairly, "They had not only outlived public respect, but public curiosity."(105)

(104) V. & P. 2/7/51.

(105) Courier, 4/7/51.

Chapter V

The Blended Council

"It is our wish," instructed Grey, when Denison was about to take up his appointment in Van Diemen's Land, "to adopt every practicable opportunity for safely extending to the British Colonies the system of self-government in the form of a Representative Legislature."

"I do not ~~xxxxxxx~~ perceive," he went on, "the impossibility of reconciling the system of a constitutional government with the decision and promptitude of action necessary for the effective rule of a large convict population." Put simply, the problem was how "to arrange the details of the measure as to render representation real, impartial and effective, while retaining in the hands of the Executive Government such powers and resources as are requisite for the general welfare of the Colonists at large." And having thus stated it, Grey asked Denison to deliberate upon the problem with his Executive Council, and to report back.(1)

Denison took up his appointment then just as a decisive change was being made in the policy of the British Government. It seemed that the Whig Administration was resolved to extend the practice of those principles of government that had by this time become associated with the name of 'Radical Jack Durham'. Any doubts and reservations concerning the application of those principles to Van Diemen's Land arose from its character as a penal colony.

(1) Grey to Denison, 30/9/46.

I Inevitably the two distinct questions of transportation and representation became involved together. Before he had been in the Colony more than three to four months, Denison was faced with a number of memorials and petitions. (2) One was forwarded by the Midland Agricultural Association and was signed by Thomas Anstey, Philip Smith, Joseph Archer, James Youl, James Cox and James Maslanachan. Another contained five thousand signatures. Nearly every petition asked for both cessation and representative institutions. The two things were inseparately linked in the public mind. But there were some, including the Lieut. Governor, who probed more deeply. Assuming that cessation was not practicable, Denison and his Executive Council worked out a scheme that he could suggest to the Secretary of State as likely to meet the needs of a penal colony. These ideas were stubbornly held in the years immediately following when immediate cessation became a highly controversial issue, and many of them were to be embodied in the new constitution that allowed for a degree of representation.

The Lieut. Governor's Address at the opening of the Legislative Council in July 1847 called for an enquiry into the means of ^{ing} establishing representative institutions while ensuring "the retention by the Executive of a sufficient power of control over the convict population." (3) This important new departure was, however, announced almost simultaneously with the news that the British Government had decided not to send any more convicts

(2) Denison to Grey, 23/4/47 and Hobart Town Courier, 8/5/47.

(3) V. & B. of the Legislative Council, 27/7/47.

to Van Diemen's Land for a period of two years.(4)

"It is not the intention," wrote Grey, "that transportation should be resumed at the expiration of the two years for which it has already been decided that it should be discontinued."(5) Some weeks later he wrote to explain changes in the plans of the Home Government for dealing with offenders, and added the comment: "You will perceive it to be the intention of Her Majesty's Government to abandon altogether the transportation of male convicts to Van Diemen's Land."(6)

Such a radical change of policy meant that the assumptions upon which Denison had made his suggestions for the introduction of a representative institution were no longer valid. His recommendations might already appear outmoded in London, and he confessed as much to Grey. At the same time he argued that, while self government was a desirable end, the means of achieving it were not easy to come by. For the people at large had become accustomed to looking to the government for direction and had "lost the habits of self-dependence". One of the greatest difficulties lay in "the disinclination of the people to tax themselves". Nevertheless, whatever the difficulties, it was imperative that the Government should "indicate its intention to carry out the principle of self-government as fully as possible".(7)

In like manner Denison hoped that the change of policy with regard to transportation should be adhered to without any suggestion

(4) Denison's minute on the despatch reads pithily, "transportation will cease" and is dated 21 July '47.

(5) Grey to Denison, 5/2/47.

(6) *ibid.* 26/3/47

(7) Denison to Grey, 20/8/47.

of vacillation, and warned Grey that "the feelings of a large portion of the ~~population~~ community were so fully enlisted in the opposition which had been raised to the convict system here, that any attempt to revive it in any form would be looked upon by them as a breach of faith, and would cause feelings of hostility which would be very embarrassing to the Government." (8) He reminded Grey too that Van Diemen's Land had become a penal colony not only for offenders sent from England, but from other parts of the British Empire, and especially from India and New South Wales, as part of a system of secondary punishment. If transportation was to cease, then the authorities in these parts should be instructed no longer to send convicts to Van Diemen's Land.

But it was already too late. For in May Grey wrote to Fitzroy ordering him to close the convict establishments in ~~Van Diemen's~~ ~~Land~~ New South Wales and to transfer all the convicts to Van Diemen's Land. (9) The news of this decision arrived in Hobart only at the very end of the year, and Denison's resentment was barely veiled as he argued strongly against it, reminding Grey that there were more than six thousand convicts in New South Wales and nearly six thousand ticket of leave men. To support his argument he forwarded a petition of more than four thousand inhabitants against the removal. (10)

The general confusion of the public mind that these actions of the British Government gave rise to was matched by the growing doubts

(8) Denison to Grey, 20/8/47.

(9) Grey to Fitzroy, 4/5/47.

(10) Denison to Grey, 31/12/47.

in the mind of the Lieut. Governor about the wisdom of the decision to abolish transportation. When certain memorialists, including Robert Fitzcarrin, Thomas George Gregson and Joseph Allport, argued that the drift of population from the Colony to the mainland was causing economic ruin, and that it was due to the low price of labour, he questioned their economics. Already he was beginning to see and fear the economic consequences to the Colony of a sudden cessation, which would cut off both capital and labour supply at the source. (11)

For the time being, however, his mind was concerned more directly with the detailed planning of a new constitution, designed to admit in some measure the principle of representation, than with the possible economic consequences of the policy on transportation. Of the political effects of cessation he had no doubts, and he stated categorically to Grey that it meant that Van Diemen's Land was henceforth in a position analogous to that of New South Wales, and that therefore the Act of 1842, under which the oldest colony had received a partially elected chamber, could be applied with certain modifications to Van Diemen's Land. The chief modification that he desired was that all mention of the establishment of district councils should be omitted. For they had shown themselves to be ineffective in New South Wales. A far better plan would be to vest the Legislative Council under the new constitution with powers to create such district councils, when the need arose. Local government

(11) Denison to Grey, 3/12/47.

should be introduced gradually at the request of the local communities. Already a beginning had been made with the local Acts empowering the inhabitants of Hobart Town and Launceston to regulate certain of their material interests.

Where Denison envisaged the greatest trouble was in the matter of finance. He had spoken of the disinclination of the colonists to tax themselves. He had little faith in their readiness to find revenue to maintain the weight of the administration. He therefore carefully worked out a number of schedules of expenditure to cover the needs of important departments of state, and such schedules would be beyond the power of the Legislative Council to touch. These lists of fixed salaries would have the first call upon consolidated revenue. Schedule A included the establishments of the Lieut. Governor, and the Judiciary; Schedule B those of the Colonial Secretary, Colonial Treasurer, Colonial Auditor and the Clerk of the Executive Council; and Schedule C provided for the allowances of Ministers of Religion. By this means Denison hoped to protect the important posts of the Executive Government from the interference of an intemperate and inexperienced Legislature. And, in large measure, his ideas were shared by those in England who came to draft the new Constitutional Act. (12)

Having encouraged the optimism in the Australian colonists, Grey now began to dash their hopes and reinforce discontent. It took longer to draft and pilot through a bill than he had anticipated

(12) Denison to Grey, 2/10/47.

The year 1848 passed in the colonies with nothing achieved. In Van Diemen's Land Denison was having his first experience ~~xix~~ of handling a Legislative Council, and it led him to modify his views on the constitutional needs of the Colony. In London the Whigs' enthusiasm for radical changes was tempered by the stormy ~~xxx~~ events of Europe, and, as West put it, "the fate of Van Diemen's Land did not command peculiar interest amidst the wreck of thrones and the overthrow of empires." Grey's original bill was not presented to Parliament in 1848. In view of the opposition in New South Wales to some of its provisions, it was decided to refer the whole matter to a Committee of the Privy Council. Both Fitzroy and Denison heard of these developments early in 1849.(13)

Certainly Grey showed no inclination to impose his own ideas on the Colonists and sufficient time was given for Colonial opinion to express itself. Denison took advantage of this opportunity to outline for Grey's benefit a scheme of representative government in Van Diemen's Land.(14)

The Committee of the Privy Council reported in April, 1849, and in June a Bill which substantially embodied its recommendations was introduced to Parliament. By this time Grey had been convinced of the unwisdom of his idea of indirect election through district councils and converted to the idea of the "blended" house. The Bill was given the fullest consideration in both Houses. Either because he wished to test the reaction of New South Wales to the

(13) Grey to Fitzroy, 31/7/48: copy to Denison.

(14) Denison to Grey, 9/2/49.

new provisions, or because the session was too advanced, Grey withdrew the Bill in 1849, and reintroduced it in February of the following year. Certain provisions, particularly the one concerning Federation, were struck out, and eventually the Bill passed all stages. Its main achievement was to create a new colony out of the Port Philip settlement, and to set up in all four colonies the form of constitution that had operated in New South Wales since 1842. In this the Legislature had a membership, two thirds of which were elected, while the rest were nominated.(15)

Meantime a new storm had burst in the colonies. For amid the difficulties of 1848, Grey had reversed his former decision on transportation, and proposed that all convicts, after having gone through the two first stages of punishment, should be removed as holders of tickets~~of~~-leave to Van Diemen's Land. By an Order in Council dated 4th September 1848, Van Diemen's Land was named as the penal Colony to which convicts were to be sent. As a contemporary who hated the whole system of transportation and worked unceasingly to have it abolished, John West describes vividly in his "History of Tasmania" the prospect before the colonists in this year of disappointment and disillusionment and general gloom when ticket holders by ten of thousands were about to be thrown into the Colony. To him and many with identical views Grey's theory of dispersion was utterly exploded. From this moment the Secretary of State, whose advent to the Colonial Office had been hailed as the deliverance by

(15) 13 & 14 Vict. c.59: Grey gave the populations of the four Colonies as: N.S.W. 171,000; V.D.L. 70,000; Vic. 51,000; S.A. 49,000.

the liberal spirit from the appalling shackles of the Stanley system, lost the confidence of the majority of the colonists. During the course of 1849 countless petitions poured in to Denison calling for abolition and representative institutions. Even the magistrates who had been asked by Denison to make a sober estimate of opinion reported to the same effect, and already the resolution moved by Sharland and passed by the Council had been forwarded to London. News reached the island of the growing opposition to Grey's policy in New South Wales, and in far off Cape Colony. The anti-government press, in particular the Hobart Town Courier and the Launceston Examiner, gave the fullest publicity to the horrors attending transportation and glorified any rebuff to the government as an example of patriotic zeal. The story of the clamour at the Cape when the "Neptune" was forced to carry away its human cargo to Van Diemen's Land helped to harden public opinion on the issue and to lead to the formation of the Australasian League in August, 1850. By this last development "the whole of the Australian Colonies," in West's words "are deeply interested in preventing the continuance of transportation to this island".

During the succeeding months, the energy and ardour of the Leaguers knew no bounds. A monster meeting in Sydney pledged itself to co-operate with their brethren in Van Diemen's Land. In the following February the League held its first conference in Melbourne, adopted a flag and established a fund to finance its activities. Further conferences were held in Sydney and in Adelaide later in the year, when enthusiasm for the League was at fever pitch.

It was in this atmosphere that the news arrived in the Colony that at last the Constitution Act was passed.(16) Denison's reaction was one of general satisfaction, although, in acknowledging the receipt of the Act, he expressed certain doubts concerning the clause which disenfranchised those holding conditional pardons.(17) The Press reported the news with satisfaction, though without enthusiasm. Under the headline, "Come at last" the Courier said that the colonists had been favoured with the smallest possible concession of legislative power after being petitioners for twenty of thirty years, and attributed the change to the French Revolution and to the Parisian people who had disturbed the quiet of Downing Street despotism. However, it recommended the colonists to accept the Act, to improve its provisions, to get more effective control over local affairs, and thereby to rescue the Colony from the disgrace and mischief of convictism.(18)

In the weeks that followed the same radical newspaper showed itself impatient for results, and castigated the Government for the delay in bringing in the Electoral Bill. Mistrusting Denison's every move, the Courier presented the radical demands as the abolition of transportation, the reduction of expenditure, public works by contract, appropriation of the Land Fund to assist immigration, the abolition of all inter-colonial duties and municipal government for Hobart and Launceston. Above all, it protested against a Civil List of £42,000.(19)

(16) Grey to Denison 30/8/50, 7/9/50. A copy of the Act 13 & 14 Vic.c59 came into Denison's hands on 31/1/51.

(17) Denison to Grey, 17/2/51. (18) Hobart Town Courier, 1/2/51.

(19) Hobart Town Courier, 16/4/51.

Though he was accused of indulging in delaying tactics, Denison was not slow in moving to implement the Constitution Act. He sought the advice of the Attorney-General, who was of the opinion that there was no need to refer the matter to the Executive Council, as an ordinance of the Legislative Council could give effect to the Act.(20) The Executive Council was, however, consulted about the division of the Colony into electoral districts. Denison suggested three alternatives. The first was that the Colony should be divided into large districts, and each should be given members roughly in proportion to its population. But he objected to this, because it would give the towns, which had two-fifths of the population of the whole, as many as six members out of the sixteen to be elected. The second alternative was to separate the towns and divide the rest into large districts as before. But for some reason he believed that this would allow the larger districts to swamp the smaller. The third, which he advocated, was to separate the towns and to divide the rest into single member constituencies roughly equal in size. As the Executive Council agreed with him, he then took a map and proceeded to divide up the Colony on the basis of the number of houses in each district. Hobart, which had 3285 houses was made into a single constituency and given two members. On this basis Launceston, having 1642 houses, was given one member. Anxious to avoid the development of jealousies between north and south, Denison gave six members to the North, where there were 4328 houses and ten to the South where there were 7362 houses. For the rest it was hoped to preserve established and recognised boundaries.(21)

(20) Fleming to Bicheno, 17/2/51.

Council Minutes, 12/4/51.

A few days later, the Executive Council considered the draft Bill and recommended certain amendments. The name Cumberland was preferred to Hamilton and Bothwell, and the proviso that the Returning Officer in any district should be qualified to vote was struck out on the advice of the Solicitor-General. Further consideration was given to the form and manner of issue of writs and to the establishment of a special court to deal with complaints arising out of the election of a member.(22)

Even when the contents of the draft Bill were made public, the Hobart Town Courier remained critical. It described the Bill as a mass of miscellaneous material, thought there had been too great an inclination to incorporate parts of previous Acts, and said that the Crown Lawyers had exerted too much influence and the Executive Council too little, which amounted to "an improper devolution of Executive authority". The reliance upon 'collectors' to prepare electoral registers was not the proper way to initiate the system, for "self-registration should be the basis of free-~~xxxxxxxx~~ election". Nor did it agree with the idea of establishing a Board to deal with disputed elections. Such disputes should come under the control of the Council itself, which should appoint a Committee of five members to deal with them. As for the restrictions on bribery, they were too absurd. Even the presenting of a cockade could be construed as bribery!

But the Courier was impartial enough to condemn wholeheartedly the delaying tactics of Gregson and Dry. When they wanted a delay

(22) Hobart Town Courier, 9/4/51, 18/4/51, 23/4/51, 30/4/51, 7/5/51.

Executive Council Minutes, 17/4/51

to consider the draft, Denison objected, arguing that plenty of time would be allowed for criticism and amendments at the Committee stage. But four non-official members walked out, and thereby forced an amendment. Thereupon the Courier castigated the Council severely for showing indifference to the Bill. For, it said, while members haggled over details, the improper civil list which was attached to the Bill had been passed without a censure.(23)

However, early in July the Council re-assembled, the Bill was read a third time and duly passed, and within a week the Old Council was finally dissolved. During the next two months candidates were being encouraged to come forward, and writs were being prepared for what was to be the Colony's first free election.

The first elections in the Colony took place late in October, 1851. In most electorates there were contests. The issue of transportation overshadowed all others. Almost everywhere the method of nomination followed the pattern set in Hobart where two seats were to be filled. There, in front of the Customs House, Dunn was proposed by Officer and seconded by Orr; Chapman was proposed by T. McDowell and seconded by Pitcairn. A third candidate, by name Young, failed to get a hearing. The Returning Officer, Sorell, then declared the first two candidates nominated, whereupon Young demanded a poll, which took place one week later.

A number of candidates were elected unopposed. These were Gregson for Richmond; Askin Morrison for Sorell; Fenton for New

(23) Hobart Town Courier, 9/4/51, 18/4/51, 23/4/51, 30/4/51,
& 7/6/51.

Norfolk; and Gleadow for Cornwall. The last named as a declared member of the Anti-Transportation League, indeed one of the hundred guinea subscribers!

As might be expected the greatest excitement was shown in Hobart and Launceston. In the northern town, the headquarters of the League there were rowdy meetings and much horseplay. Dry had overwhelming support, but his opponent, Adye Douglas, a man with a long future in the Parliamentary life of the Colony, revealed both intelligence and moral courage. But in the atmosphere of the time the battle was unequal. The result was:

Dry - 516

Douglas - 140

The three cornered contest in Hobart was bitterly fought. Chapman's supporters wore rosettes, and fashionable ladies openly revealed their partisanship. Wherever possible these rosettes were ground into the earth by their political opponents. But here again the Anti-Transportationists carried the day, winning both seats.

Chapman - 892

Dunn - 853

Young - 544

At the declaration of the poll the scene became riotous. As Chapman was being chaired around the city, a number of rowdies poured out of the Glasgow wine vaults at the corner of Elizabeth and Liverpool streets, and in the fracas that ensued, several persons

were injured. The Courier denounced the attack as deliberate and as likely to foster class feeling.(24)

In the country districts, where the number of eligible voters was much smaller, there was little excitement. Other members returned for the first Legislative Council were:-

Buckingham - R. W. Nutt.

Huon - R. Cleburne.

Campbell Town - R. Q. Kermode.

Longford - Joseph Archer.

Westbury - William Archer.

Morven - James Cox.

Oatlands - H. F. Anstey.

Brighton - John Walker.

Cumberland - W. S. Sharland.

Thus the sixteen elective seats were filled in a way which caused the Courier to talk of "the complete triumph for the anti-transportation principle". When the last election - that at Westbury - was declared, it cried exultantly: ALL ANTI-TRANSPORTATIONISTS!

Then it expressed the hope that the victory would be well used; and, in order somewhat glowing terms described what was expected from the new chamber. "The public will expect something better than the vapid ebullitions of rancour..... We look to the New Assembly as a great instrument towards improving and raising the tone of public opinion. We cannot too much impress upon several of the new members

(24) Hobart Town Courier, 22/10/51, 29/10/51, 1/11/51.

that they are no less representative of the minority who voted against them."(25) When Chapman and Dunn refused to dine with the Lieut. Governor, the Courier reprehended them, saying, "They much mistake the temper of their constituents if they imagine they will accept as earnest of good service the eager seizure of every opportunity, with or without reason, to bring about a collision with the Executive body,"(26)

The appointment of the eight non-elected members was then announced. They were Peter Fraser, Adam Turnbull, Valentine Fleming, Francis Smith, William Race Allison, who had just been defeated by Kermode for the Campbell Town seat, Edward Bisdee, John Leake, and Richard Gilbert Talbot.

Every effort was made to see that the ceremonial opening of the New Council on the 30th December 1851 fitted such an historic occasion. It was with a certain native pride that the correspondent of the Courier described the Chamber. In the centre stood a long table made of blackwood and covered with a black cloth, and at one end if it a cross table for the use of the Clerks of the Council. The members' benches alongside the table were upholstered with morocco leather. The chair of His Excellency and that of the Speaker to the right of it stood on a dais and bore special carvings. All this work had been done locally by Mr. Whitesides of Liverpool Street. On the woodwork behind the Speaker's chair "the arms of Great Britain were carved in a superior manner". A door to the

(25) Hobart Town Courier, 8/11/51.

(26) ibid , 31/11/51.

right led to the Speaker's apartments, one to the left to the rooms of the Sergeant-at-Arms. "Two hot air stoves of very creditable design and workmanship, executed by Messrs. Clark and Davidson, are fitted upon the floor; and from two enriched centres in the ceiling are suspended two handsome six-burner chandeliers for solar lamps with shades. These were manufactured wix by Mr. Heyward of Elizabeth Street." Temporary buildings had been built at the back to provide Committee- and refreshment-rooms and to accommodate officers of the Council and the housekeeper. Nothing was forgotten. For "in the coal-hole there is sufficient room for refractory members."(27)

The non-elective or nominee members took their seats first followed by the others. Major Fraser, the Sergeant-at-Arms, appeared resplendent in a full court suit. Henslowe, the Clerk of the Councils, began at once to read the proclamation convening the Council. Then the Colonial Secretary, the Attorney-General and Leake were commissioned to administer the oaths. The next business was to choose a Speaker. Cox moved that Dry be elected and this was seconded by Chapman, the member for Hobart. There was no division and Dry was accepted by the Council. According to the old medieval tradition the acceptance of the name of Dry as Speaker was sought of the Lieut. Governor at half past two that afternoon at Government House. Having heard that the Lieut. Governor accepted their choice, the Council then adjourned till the first day of January, when the Lieut. Governor's address was to be read.(28)

(27) Hobart Town Courier, 31/12/51.

(28) *ibid.*

During the four years of its life the 'Blended' Council met regularly in the afternoon, and usually at four o'clock. The sessions began in the winter and ran well into the spring or even into the next year. The sitting days exceeded what was normal in the days of the Old Council. In 1852 it sat on 63 days, in 1853 on 45 days and in 1854 on 53 days, while in 1855 there were two sessions, the first of 34 days from July to September and the second of 41 days from late in November to early in February.

At the same time the amount of business had increased. The new Council, whatever criticism was levelled at the Executive, did feel itself more in control of its own proceedings. The Lieut. Governor was not present, its own Speaker presided, and the 'opposition' were able to dominate the proceedings both in the House and in various Committees. The Executive, from which originated most Bills, was not able to have all its own way. Many Bills were allowed to lapse, and some were actually defeated. In 1852, out of 29 Bills introduced 23 were passed and assented to. In 1853, only 22 survived out of 33; in 1854, 28 out of 38; and in 1855 16 out of 28 and 17 out of 21 in the two sessions respectively. These figures reveal that the Legislative Council was by no means an amenable Chamber. The members did not spare themselves work. They were anxious to look into every business of state, and to this end members were prepared to work arduously on Select Committees. The number of these committees, most of which prepared and presented reports, is most striking in a Council of twenty-four members. In 1852 and 1853 there were 17 Select Committees and in 1854 no fewer than 32. There can be little doubt

that during these few years members were learning much about the varied and intricate nature of government, and this experience was invaluable as a preparation for the more responsible government that was introduced a few years later.(29)

The first session of the Blended Council was not marked by any acute controversy between the Executive and the elected members of the Council, though the bitterness of the election campaign led many to expect it. Not that the newly elected members were without grievances. One of their first acts was to set up a Select Committee to deal with the Grievances of the Colony.(30) In fact, much of their time was taken up with committee work. Select Committees were set up to study immigration problems and to investigate the Survey Department. The School Bill lapsed in yet another Select Committee. Most important was the work of a Finance Committee of the Whole House, which enquired into financial problems raised by the opening Address of the Lieut. Governor. It cannot be said therefore that the elected members of the Council acted rashly or openly looked at this time for a collision with the Executive. On his side Denison preferred to work smoothly with the Council, and his task was made so much easier by the fact that he could remind that body of the buoyant state of the revenue(31)

Certainly his difficulties were increased following the premature death of Bicheno, the Colonial Secretary, just when his mature knowledge of men and affairs and his experience in handling

(29) Legislative Council, V.& P. 1852, 1853, 1854, 1855, 1st Session and 2nd Session.

(30) V. & P. 23/6/52.

(31) Lt. Governor's Message, 18/8/52.

the 'Opposition' would have been invaluable. For many months Denison was obliged to use the services of Peter Fraser, a veteran in the service but a man, who would have preferred to avoid this temporary promotion and to have remained in the more peaceful office of Colonial Treasurer. At the same time Adam Turnbull assumed the duties of Treasurer and was nominated to a seat in the Legislative Council.

On receiving news of Bichenor's death, it seems that Grey was anxious to fill the office of Colonial Secretary as quickly as possible in view of the necessity of carrying out the terms of the Australian Colonies Government Act within the Colony. He wanted too a man who had, not only integrity and proved administrative ability, but also sympathy for those liberal principles of government, which the British Government was pledged to extend to the Colony. Such a man he found in H. S. Chapman, who, at this time, occupied a position on the bench in New Zealand. Accordingly, Grey, working through

intermediaries, got in touch with Chapman's father in England, who, in the name of his son, but "with full responsibility" accepted the appointment of Colonial Secretary in Van Diemen's Land. When Chapman first heard of it in New Zealand, it came to him, not as an offer, but as an appointment which had been gazetted, and he was asked to proceed to take up his new duties with as little delay as possible.(32)

According to the evidence given by Chapman at the time of his differences with Denison in September 1852, he left his former

(32)Memorandum prepared by H.S.Chapman "on the circumstances (so far as I am acquainted with them) relative to my appointment as Colonial Secretary". V.& P. 1853 Paper No.54.

position only with reluctance, and because in the circumstances he had no other alternative. The new appointment had not prejudiced the possibility of a return to the bench in the future, and no pledge had been exacted from him on the question of transportation. His "theoretical opinions and impressions had not been put to the test of practical experience", but while in New Zealand he had vigorously opposed the suggestion to send convicts to that colony. He was half persuaded that Grey, in appointing him, had wanted "to elicit the opinion of a new mind, brought freshly into contact with convictism".(33)

He took up his duties in Hobart in April 1852. Very quickly, by his zeal and administrative ability, he won praise from the Lieut. Governor, while his tactful handling of the elected members in the Council revealed the qualities of an adept Parliamentarian. He was reticent on the major issues of the day, not even revealing his true opinions on transportation to a close relative, C. B. Brewer, with whom he was frequently in contact. Though there was undoubtedly much speculation upon the new Colonial Secretary's opinions, the only incident which provided positive evidence was when he advertised for a "Free Cook". (34)

Chapman studied the debates and proceedings of the First Session and came to realise that there was a strong feeling in the Council and in the country against transportation. After six months he was

(33) Memorandum prepared by H. S. Chapman in reply to Denison's charges for forwarding to the Secretary of State; V.& P.1853 Paper No. 54

(34) Brewer to Chapman, 25/10/52: V.& P.1853 Paper No. 54.

"led to the gradual confirmation, growth and development of opinions unfavourable to transportation in all its aspects".(35)

The proceedings of the Legislative Council throughout the sessions of 1852-3 were punctuated by addresses, petitions and resolutions moved by various elected members and calling for a cessation of transportation. The elected members were unanimously resolved to achieve this object. Denison was equally resolute in declaring the policy of the Government. He advised the Secretary of State that an immediate cessation was contrary to the economic welfare of the Colony, and tabled the despatches in the Council. So adamant was he that certain members were convinced that he was determined to support transportation as a principle.

It was obvious to most, and to Denison and Chapman in particular, that the matter was being brought to a head when, on Wednesday 8th September 1852, Gleadow gave notice of a motion of an address to Her Majesty, declaring "we desire to express our deliberate opinion that the time has arrived at which transportation to this Colony should cease; and we therefore humbly, but earnestly pray that Your Majesty will be pleased to revoke the said Order in Council".(36)

Denison was determined to show a common front in face of renewed attack. Only about this time it seems, did he become aware of the changing views of his Colonial Secretary.(37) But not till Friday

(35) Memo. in reply to charges. V. & P. 1853 Paper No. 54.

(36) V. & P. 8/9/52.

(37) Turnbull also said he learnt of the change in Chapman's views only at the time of Gleadow's motion: Turnbull to Pakington, 18/10/52.

after discussing ordinary business, did Denison raise the subject of the motion. Much to his surprise Chapman said, "I do not see how I am to vote against it in the way in which it is worded". To this he replied instantly, "It is utterly impossible that you can vote for it." For it was directly contrary, not merely to his policy, but to that of the Imperial Government. Chapman reminded him of the known opinions of Francis Smith, who had been nominated to the Council. Denison admitted this, but argued that the Colonial Secretary was in a different position, being "the authorised agent of the Government in the Council, and the exponent of its views".

Their discussion was resumed on the next day, when Denison reproached Chapman for concealing his opinions, whereas he himself had always been frank and straightforward. At this Chapman tried to defend himself by giving several explanations. The authorities at home must have known his opinions when they appointed him. These opinions had hardened only gradually since he had arrived in the Colony. Moreover, the Lieut. Governor was his superior officer, whose views were not to be opposed lightly. No opportunity had been given him to state his opinions. These explanations were unsatisfactory to Denison, but he contented himself for the time being by telling Chapman to see Valentine Fleming, the Attorney-General, with the object of working out a plan, whereby Gleadow's motion might be evaded or delayed. (38)

Meanwhile Denison had seen Turnbull, who promised to draft resolutions with the same object in view. Before Chapman's arrival

(38) Denison to Pakington, 22/10/52.

Turnbull had acted as Colonial Treasurer, and sat as an official member of the Council. This seat he continued to occupy, while at the same time remaining in the official position of Clerk of the Executive Council. During the interview on Friday, Turnbull gave no indication of any change in his attitude to the question of transportation, and Denison therefore assumed that he would continue to speak and vote against the measures of ^{the} anti-transportation party as he had done earlier in the year, and indeed for a number of years. (39)

However, Turnbull's ideas too had undergone considerable change, though it is not clear how far he was influenced by Chapman. Certainly he hoped that the free immigration plan, which had recently been drafted by a Select Committee of the Council, and had received, it was alleged, the endorsement of the Lieut. Governor, would make unnecessary the continuation of Transportation. From his own prolix reasoning it appears that Turnbull's chief reason in the past for supporting the policy of transportation lay in the fact that a plentiful supply of cheap labour kept wages at a low level, and thereby - and here is the point - reduced drunkenness to a minimum. Now, it seems, he had become convinced that the "Gold Revolution" in Victoria had made the control of wages by such means quite impracticable. (40) Turnbull saw Chapman twice during the weekend, but with what result is unknown. The attitude of both men had hardened when that met Denison separately on Monday morning.

(39) Denison to Pakington, 22/10/52

(40) Turnbull's Resolutions prepared for and rejected by the Lieut. Governor: V. & P. 1853 Paper 54 F.

Yet during the weekend Chapman had taken no steps to see the Attorney-General. To say the least he showed remarkably little inclination to find a way out of the difficulty. On meeting Denison he confessed that he had no plan, but that he had come to the conclusion that Representative Government and Transportation could not exist together. Somewhat nettled Denison declared this to be a matter of opinion. But Chapman persisted, and expressed his willingness to submit his resignation in order to avoid creating difficulties for His Excellency. Denison however did not desire this, had no fear for himself, but wished only "to shield him from the consequences of his conduct". Once again he asked him to discuss the problem with the Attorney-General, and there for the time being the matter rested.(41)

When he came out, Chapman met Turnbull, who was on his way to see His Excellency with his draft resolutions. He read them through, and said instantly that the ^{Lieut.} Governor would find them unacceptable. Indeed, Denison was, in Turnbull's own words, "disappointed and dissatisfied", and said that the amendment he had prepared was inadmissible, being substantially the same as Gleadow's motion. To this Turnbull agreed, and stated further that the arguments he had previously used against the anti-transportation party were no longer valid. When Denison complained that he had kept him in the dark about his change of views, he replied that his decision was recent; in fact was the result of long consideration during

(41) Denison to Pakington, 22/10/52.

the weekend. Denison then told him what he had told Chapman, that official members were expected to support the policy of the Government, whereupon Turnbull tendered his resignation. For the second time that morning, Denison preferred not to accept a resignation when it was offered. Once again he hoped to get to the end of the session without the resignations of his officers, and without a division on Gleadow's motion. Politely but firmly he asked Turnbull to follow Chapman and Jointly to work out a plan with the Attorney-General. Accordingly both Chapman and Turnbull were invited to the house of the Attorney-General that evening.(42)

At the meeting all three agreed that every effort should be made to avoid the appearance of disunity among Government officers. It was important therefore to avoid a division on Gleadow's motion. Before Turnbull arrived, Fleming and Chapman decided That this could be achieved only by moving an amendment on the ground that to petition the Queen a second time before the first petition had been answered was both indecorous and improper. Somewhat unconvinced, Turnbull asked whether there were any precedents to support such a view, and Fleming had to admit there were not. Turnbull then observed that such reasoning could be used not merely to support the amendment, but to oppose the original motion. It appears that, in saying this, he was speaking hypothetically, but Fleming assumed, not unnaturally, from the remark that he would, if called upon, vote against the motion. It was agreed finally that Chapman himself,

(42)Turnbull's Memo. V. & P. 1853. Paper 54.

who had unusual influence with members on both sides of the Chamber, should introduce the amendment. At this point the meeting broke up, Chapman left to prepare the draft of the amendment, but on his way home confessed to Turnbull that, if it came to a division on the motion, he would walk out. As for Turnbull, he had misgivings about the grounds upon which the amendment was to be supported, believing that, whereas the earlier Address to Her Majesty was a Remonstrance, Gleadow's was a true Petition, proper in form and moderate in language.

On the next morning Fleming reported to the Lieut. Governor the results of the meeting. Shortly afterward Chapman explained the nature of the amendment, but even at this late hour explained the desire to be permitted, if necessary, "to vote and speak in favour of the motion", which, he thought, would enable him to carry the Estimates through the Council. But Denison would have none of this. The old arguments on both sides were reiterated, and Denison declared that Chapman, in accepting the appointment of Colonial Secretary, had acted "improperly and unwisely". Turnbull in his turn was received somewhat coldly. (43)

The three officers saw no more of each other before the Council assembled at four o'clock. Proceedings began with Allison, in his usual fashion, asking for a return showing the number of persons who had left for Sydney and Victoria between 1847 and 1852. Impatiently Gregson told him that a Select Committee on Immigration was investigating this. As soon as certain supplementary votes had

been carried in Committee, Gleadow rose to move his motion, and referred pointedly to one among the official members whose sympathies were in favour of a discontinuance of Transportation and who was a member of a Church, which had expressed a firm and decided opinion on the matter.

In reply the Colonial Secretary praised the terms of the Address, but thought it better to postpone it, pending an answer from the Queen to the address moved earlier in the year. He moved this in the form of an amendment, which was seconded by the Attorney-General. In the debate which followed, Francis Smith, the Solicitor-General, said that he would vote in favour of the Address. Fenton also spoke in its favour. But Allison argued that if adhered to it would deprive the colonists of labour power. Winding up the debate, Gleadow maintained strongly that those who favoured cessation did so on grounds much higher than the labour question.

The Speaker then put the amendment, It was negatived on the voices, and when someone exclaimed, "Divide", it was met by an overwhelming "No!" For a moment or two there was confusion. Then someone pointed out that the Colonial Secretary was leaving the Chamber. At this juncture Turnbull appears to have concluded that the plan that he, Fleming and Chapman had arranged, had broken down, and that therefore he was free to vote according to his convictions. Certainly he had to think quickly, for already Dry was putting the original motion. The Council divided, and Turnbull went with the ayes, observing to Smith, "I have saved my conscience, but I have ruined my prospects." The tellers recorded sixteen ayes and only four noes.

These were made up of Fleming, Bisdée, Allison and Leake. It was a striking victory for the anti-transportationists, especially as they had succeeded in dividing the Government party. Once the division was over Chapman returned, went over to Turnbull and said, "Do not be alarmed, you have acted very well; you are in no danger." In the meantime, there was to be no more business that night. For certain members of the opposition, related as never before in this Council, declared the occasion called for celebration. And off they went "to drink the Queen's health!"(44)

When he heard the news Denison was furious. The conduct of Turnbull and Chapman appeared to him at best vacillation, at worst defection. Chapman he believed to have been guilty of deliberate deception. For, whereas he had studiously concealed his opinions from the Lieut. Governor, he had made them known to members of the Anti-Transportation League. Being accused of this, Chapman was so upset that on the next day Denison apologised to him for hurting his feelings. The question was what to do next. The whole affair could not be passed off lightly, for there were serious implications. As Denison later told Pakington, "the conduct of official members of the Government in voting for, or declining to oppose, such a motion has had a very prejudicial effect upon the feelings of those who have hitherto supported the Government, both in the Council and out of doors. It has seemed to indicate that the Government was vacillating between two opinions, and that no reliance could be placed upon its steady adherence to either. The nominee members of the Legislative Council, in particular, were so seriously annoyed as to threaten to resign their seats."(45)

Denison was in a quandary. He was inclined towards a policy of temporization which was contrary to what he, as a stickler for principle, was normally inclined to follow. That Chapman would have to be suspended, and later removed he had no doubt, but he preferred to avoid taking any drastic action until the end of the session. Consequently he took a course which, though expedient, led inevitably to constitutional difficulties, and brought a mild reproof from a sympathetic Secretary of State.

Throughout he showed a desire to be fair to Chapman, whose talents he valued highly, while deploring his recent conduct. Nor did he condemn him wholeheartedly. "I am not disposed," he said, "to accuse him of having been guilty of a deliberate intention to injure the Government. I believe him to have allowed his views to become known under the idea that he would be able to guide and control the party (of the opposition); that the members of that party took advantage of his weakness and pressed ~~maxx~~ the question forward in a shape which did not admit of compromise or evasion."

For his part, Chapman was prepared to resign at once, but Denison preferred, he said, "to shelter him from the ruinous consequences of a step which would have left him penniless in a Colony 16,000 miles distant from his friends and relatives". Instead of accepting his resignation, Denison kept him on till the end of the session, then offered him leave of absence on half pay, pending the decision of the Secretary of State. As if to avoid a decision too injurious to Chapman's prospects, Denison added, "I can bear

testimony to his fitness for office, and I should be glad to think that the step which my duties has compelled me to take may not preclude him from future employment under the Crown."(46)

Toward Turnbull he was more severe. He had known him much longer and felt justified in counting upon his vote. He castigated him for his conduct, and told him that he was recommending to the Secretary of State that he should be removed from the Public Service. Somewhat stunned by the unexpected weight of his misfortune, Turnbull sought out Fleming, who, he was led to believe, had erroneously informed the Lieut. Governor that he was prepared to vote against the motion. He was a sick man, under doctor's orders to avoid all excitement. He started under what he conceived to be an injustice. Why should he be singled out, when Francis Smith had openly opposed the Government policy? He was prepared, however, to resign his seat in the Council, but thought that what he had done had no bearing on his work as Clerk of the Executive Council or as Chairman of the Land Board.

As it turned out the axe did not fall immediately. He continued to attend the Council. Denison felt he could hardly proceed against Turnbull in the Executive Council without raising the question of Chapman. Once again he temporized and resorted to expediency. On Tuesday, 21st Sept, Turnbull received a letter from the Colonial Secretary offering him leave of absence. Turnbull asked for time to consider, but on being pressed, for an answer two days later, he replied by asking what charges were being preferred against him.

(46)Denison to Pakington, 23/10/52.

A copy of these charges came into his hands on Friday evening and during the weekend he sat down to prepare a long memorandum in his defence. Apparently Denison assumed that Turnbull had given "a virtual refusal to accept the leave for which he had formerly applied".(47)

Already the affair had aroused much comment. But if press comment was typical, much of the editorial speculation took place in ignorance of the facts. The anti-transportation newspapers, like the Hobart^{Town}/Courier, reacted joyfully to the carrying of Gleadow's motion, and felt certain that it meant the doom of transportation. At the same time it expressed sympathy with the Lieut. Governor who had been placed in a quandary. For he had acted quite openly with both Turnbull and Chapman. He had not expected Turnbull to act as he did, and Chapman had actually concealed his opinions from him, while making no secret of them to unofficial members of the Council. The Courier, in fact, went so far as to suggest that had Chapman pointed out with candour the utter impossibility of carrying on the government if transportation was continued a change might have been made in the views of the Lieut. Governor himself. Such a change was not feasible according to the evidence of Denison's official correspondence. But the mere fact that the Hobart Town Courier could suggest it shows an attitude toward Denison during this crisis altogether more sympathetic than that of some unofficial members of the Legislative Council. At any rate the newspaper

(47) Turnbull's Memo. V.& P. 1853 Paper 54, and Denison to Pakington, 23/10/52.

warned the public to suspend judgment till the facts were known, but it hoped that the two men would not leave public life.(48)

The Executive Council met at two o'clock on Monday, the 27th September, and sat till nearly six, when it was ajourned till the following day. The only business discussed was what to do with ~~Mr~~ Turnbull. The members were primed with informative memoranda prepared by both the Lieut. Governor and Turnbull. Before they discussed the case, Turnbull and Fleming were called in to reveal exactly what had happened at the conference at Fleming's house on the eve of the debate. They disagreed on some points, but it was clear that Turnbull had given no pledge to vote against the motion, though Fleming thought he was justified in assuming that Turnbull had agreed that the arguments used in favour of the amendment were equally valid in inducing opposition to the motion. When they had left, Denison stated his point of view quite clearly. He invoked the rule of behaviour practised by Ministers of the Crown in the House of Commons, though the two situations were not analogous, and stubbornly maintained that Turnbull "must not only vacate the seat in the Council, but also the office which has entitled him to such a seat." Then, as if to avoid any references to the Colonial Secretary, who was sitting there as a member of the Executive Council, he said that what Chapman had done had no bearing on the case that was being considered.

The members in turn gave their advice to the Lieut. Governor in accordance with the normal practice of the Council. The Senior

Officer of the Forces considered that Turnbull "did not intend to deceive His Excellency, though through the conduct he pursued he did decidedly mislead him". Moreover, "he evidently failed in the duty he owed the Government." The Colonial Secretary said there had been no intention to deceive, and stressed that Turnbull had voted according to his conscience. He believed that he had been guilty merely of "an error of judgment". Turnbull was prepared to resign his seat, but, in his opinion, the seat and the office were not inseparable, and therefore he asked that he should not be suspended, but given leave of absence, pending the decision of the Secretary of State. The Colonial Treasurer, Peter Fraser, was, on the other hand, in favour of suspension, though he was convinced that there had been no deliberate deception. This opinion was more or less acquiesced in by the Chief Police Magistrate, Burgess. The Bishop was absent.

The deliberation having ended, the members advised the Lieut. Governor to remove Turnbull from the Legislative Council and to suspend him from office until the pleasure of the Secretary of State was made known. At the same time, while admitting that his conduct had misled His Excellency, such had not been his motive or object, and taking into account his long service they respectfully submitted "whether it might not be possible to grant him leave of absence until the pleasure of the Secretary of State can be known"(49)

(49) Executive Council Minutes, 27/9/52, 28/9/52.

The decision was not made known to Turnbull there and then, or indeed for some days. In fact after the Council had risen, the Colonial Secretary came to him and requested him to attend the Legislative Council that evening, when a resolution was to be moved by Eenton expressing want of confidence in the Lieut. Governor. But owing to illness Turnbull could not attend. For this he was mildly reproved by the Colonial Secretary, but was more severely reproached by others. Unquestionably by this time Turnbull had become resentful because Chapman and Smith seemed to be treated so differently. His illness kept him in doors for some days, and not until the following Monday, the 4th October, was he apprised by the Colonial Secretary of the Lieut. Governor's decision. The message read: "I have to acquaint you that His Excellency accedes to the request of the Executive Council and is willing to grant you the alternative of the leave of absence."(50)

In the meantime Denison had received the Address, but, while promising to forward it, declared that he could not support it, arguing that immediate cessation would effect the economic ruin of the colony without improving its morals. This characteristically forthright statement, however, roused the ire of the Courier, which said that he had actually built a wall to run his head against. It was critical too of the handling of the Turnbull case. To try Turnbull for dereliction of official duty and to leave the Colonial Secretary was, it avered, a ludicrous proceeding.

(50) Andrew Clarke to Turnbull, 4/10/52.

By this time Fenton had moved the motion expressing want of confidence in the Lieut. Governor, and maintaining "that during his administration it will be impossible to preserve that harmony and good understanding which should exist between the Legislature and the Executive." This gave rise to a most spirited debate.

When Anstey agreed that the resolution was necessary "to counteract the influence of Sir William Denison", Leake replied that he had every confidence in the Lieut. Governor, who had displayed more energy and wisdom than any of his predecessors. He doubted, moreover, the motives of the other side who were influenced not by ^{the} humanitarian sympathies of Wilberforce, but by the snobbish sentiments of Nouveaux riches. Gregson then descended to the very depths of vituperative abuse. After referring caustically to the absence of Turnbull, whose attendance that night had been "commanded" - a fact which the Colonial Secretary denied, - he declared that the Lieut. Governor had lost the confidence of all by so forgetting his high position as to become "a scribbler to a low newspaper". This reference to Denison's close connection with the Hobart Town Advertiser was to have important consequences. Turning aside for a moment to make an indirect attack on the Attorney-General, he accused him of being an office seeker, who had angled for the position of third judge. He thought Denison one of the most unscrupulous Governors who had ever governed a British Colony, hoped the Address would be adopted, laid before Her Majesty, and promptly acted upon by her ministers. The motion was put and carried by twelve votes to nine. Dunn and Sharland voted with the noes (51)

Derison remained imperturbable. He received the address formally, and promised to forward it. Meantime, arising out of this debate, a storm was breaking in the Press. It was rumoured that the Speaker had canvassed parties to vote for the no confidence motion. The Courier's editorials became increasingly critical. It castigated "the acts of intimidation and cajolery which have been practised for the purpose of entrapping supposed reluctant members into the participation of extreme courses without reference to their constituencies". A little later it deplored that "no member can venture to express an opinion in opposition to the ruling junta without the certainty of unchecked abuse within or libel without its walls", denounced the habit of alluding invidiously to the nominee members who were quite as independent as the elected members. It referred contemptuously to certain members, in a phrase that originated with O'Connor, as "the pseudo-liberals elected by ten pound householders." (52)

Still full of venom Gregson returned to the charge. He asked that all correspondence be tabled which dealt with Turnbull, who had not returned to the Council. Every attempt was made to confuse the Colonial Secretary, who refused to answer questions designed to elicit information concerning his relations with Turnbull. Later when Champ took his seat Gregson queried his constitutional right to sit if he was still a pensioner of the Crown. Not until the last week in October did the Lieut. Governor in a series of despatches

(52) Courier, 9/10/52, 27/10/52.

inform the Secretary of State of all the events of the crisis. By then he had resolved on removing Chapman from office.(53) As Fraser refused the office on the grounds of ill health, Denison recommended Champ, mentioning his experience as Commandant in Tasman's Peninsular, his excellent business methods, and his knowledge of the men and the situation with which he would have to deal.(54) At the same time he blamed Chapman for having failed to cement the alliance between the Government members and the moderates, who, he alleged, were ready and willing at the beginning of the session of 1852 to resist extreme measures. Moreover, his unsympathetic attitude towards the nominee members had alienated them, while giving encouragement to the extreme faction. But though the extremists had won the day, Denison affirmed that their majority did not represent the true feeling of the Colony, and he went so far as to assert that if a dissolution should take place, arising, for example, from the failure of the Council to pass the Estimates, certain members would lose their seats. For he concluded that there had been a swing in public opinion in view of "the changed tone of a great portion of the Press".(55)

It is by no means easy to gauge public opinion on the issues arising out of the passing of Gleadow's motion, the suspension of Chapman and Turnbull, and the vote of no confidence in the Lieut. Governor. It was probably more evenly divided than the propagandists

(53) Denison to Pakington, 22/10/52, 23/10/52, 25/10/52, 29/10/52, 3/11/52. These despatches contain a narrative account of events as seen by Denison, together with his comments upon Turnbull's appeals and Chapman's explanation of his conduct.

(54) Denison to Pakington, 26/10/52.

(55) *ibid.*

of the Anti-Transportation League have led posterity to believe. Besides many who were sincerely opposed to transportation, would take no part in the move to pin responsibility on the Lieut. Governor. His prestige was steadily increasing. Certainly in November there were petitions calling for cessation, but there was also a petition signed by more than four hundred landowners and merchants, who deplored any early cessation in view of the acute labour shortage. Probably the doubters were increasing in number especially as it was made clear, early in the following session, that the optimistic hopes of bringing in free immigrants, as recommended by the Select Committee of the Council, were not to be realised.

As for the personal attack on the Lieut. Governor which was embodied in Fenton's motion, it was answered in a vigorously worded petition in favour of Sir William Denison, though Bishop Nixon decided at the last moment to withdraw his signature, because, he said, of the Lieut. Governor's declared belief that cessation would not lead to the moral amelioration of the Colony.

The month of November, while the Legislative Council was in recess, was remarkable for a series of public meetings. In Launceston the Anti-Transportation Leaguers were dominant under the management of Gleadow, but in Hobart, despite the fulminations of the Courier, the tide was not running so strongly in their favour. An attempt made by Dry and others to steal the stage prepared by their opponents in the Victoria Theatre in Campbell Street produced rowdy scenes

and ended in the discomfort of the Leaguers. Nor were their efforts made in the Mechanic's Hall in Melville Street on the following evening more successful. For the crowd refused to accept Dry when he was proposed for the Chair. When the Advertiser, "the government organ" joyfully reported these scenes at length, the Courier attributed the whole rowdy affair as a stunt prepared by "the proprietor of a very low print". As the Press war began there was talk on all sides of the coming dissolution. The Advertiser reported that after his recent tour of the State the Lieut. Governor was re-assured, while the Courier told its readers that constituents should remember their duties and return the same members as before until the "Great Grievance" was fully removed.(56)

The Council was called together at the very end of the year to give consideration to the Estimates for the Departments of Police and Gaols, and, though the meeting provided the occasion for a reiteration of the old arguments against Transportation, Gleadow proposed that the estimates should be passed to cover the period up to 31st March 1853, by which date it was hoped an answer would have been received to the Address to the Queen. Doubts were expressed whether an answer could be expected so soon, but Gleadow's motion passed.(57) The tension was immediately eased, and the Courier suggested that an election was no longer necessary.(58)

With the Council prorogued attention of the Press and Public alike was focussed on two trials in which the redoubtable Gregson

~~xxx xxxxxxx~~(56) See Hobart Town Courier and Advertiser from Nov.13 to Nov.27 for rival points of view.

(57) V. & P. 3/1/53.

(58) Courier, 11/1/53.

was involved. In the first he took action for libel against the Hobart Town Advertiser, claiming one thousand pounds as damages for injuries done to his character. The case was heard before Justice Horne in mid-December. Gregson won his case and was awarded fifty pounds damages.(59) The second trial arose out of the first. It seems that one Balfe, an Irishman, who had connections with both the Convict Department and the Advertiser was sub-poenaed by Gregson. After the hearing an act of violence took place outside the court house when Balfe attacked Gregson with a horsewhip. For this Balfe was charged with assault. The case which came on late in January, aroused unusual publicity. It was handled for the Crown by the Attorney-General before Chief Justice Pedder, but the highlight was when Balfe, who conducted his own defence, cross-examined Gregson in an effort to lay stress on all the notorious events in that person's public and private life.(60) At first the jury could not agree, but next day they brought in a verdict of guilty. Then followed a rush of Balfe's supporters to pay the fine and to act as sureties.(61)

The last phase of the struggle against transportation had opened. Of the two senior officers whose careers had been interrupted in consequence of their views on the question, one, namely Chapman, had departed for England. The other, Turnbull, remained to engage in one more fight before he left the government scene to perform

(59) Courier, 13/12/52.

(60) The Court was reminded, for instance, of how Gregson horsewhipped Henry Arthur and Thomas McDowell.

(61) Courier, 25/1/53.

important duties in the Presbyterian Church for many years.

Meantime a change in the administration had led to important decisions in England. Following a general election Derby's Conservative government failed to secure a majority and after meeting the House of Commons, resigned. It was succeeded by a Coalition of Whigs and Peelites under Aberdeen. One of the last acts of Pakington at the Colonial Office was to write Denison, informing him that in the Queen's Speech at the opening of the new Parliament mention had been made of the desire of Her Majesty's Government to work towards "the abolition at no distant period of transportation to Van Diemen's Land". In this despatch, while paying tribute to Denison for having "powerfully vindicated the order and industry and the good conduct of the population" and to Hampton, the Comptroller-General "under whose vigorous administration the discipline of the convicts has been brought to a state of great perfection", Pakington stated that, in view of "the strong repugnance in Van Diemen's Land and in the adjacent colonies to the reception of convicts", The government had decided that Transportation should cease. Since the opening of the goldfields transportation had lost some of its terrors, and many did not mind being taken at the public expense to the vicinity of an area "which thousands of honest labourers are in vain striving to reach". But having said this, he warned that it was impossible to fix an actual date for the cessation. It would be some time before the law was changed by Parliament.(62)

(62) Pakington to Denison, 14/12/52.

The new Secretary of State for the Colonies in the new government was Newcastle, who let Denison know quite early that it was the policy of the Government not only to proceed with the matter of cessation raised by the previous administration, but to give effect forthwith to the anticipated change of the law by Parliament. He acknowledged receipt of the Address sent by the Legislative Council on the subject, and noted the differences that had arisen between it and the Executive, not omitting the resolution expressing want of confidence in the Lieut. Governor. Of Denison's attitude he expressed complete approval. This vindication is worth quoting.

"It is your duty upon fitting occasions to avow the honest convictions which you may entertain upon great questions of public policy affecting the material or moral interests of the Colony the Government of which you are commissioned to administer. And the occasion which you seized, in this instance, to express your dissent from the views of the Legislative Council respecting transportation was a fitting one, in my opinion, looking to the premature and unfounded ^{inferences} ~~inferences~~ which, in the absence of such an authoritative declaration on your part, the public would not have failed to draw from the conduct of some of your organs in the Legislative Council!"

Moreover, if there were difficulties arising from the change of policy, Her Majesty's Government would do all it could to help overcome them. So optimistic of the outcome was the Secretary of State that he felt assured that, with the question of transportation

settled, the cause of disagreement between the two branches of government would disappear, and "the Executive will receive a conscientious and independent support from the majority of the Legislative Council." (63)

These two important despatches came into Denison's hands at the same time, and once their contents were revealed there was widespread jubilation, accompanied by feelings of relief. (64)

Denison's own reaction to the news was sincere enough. When the Legislative Council met in July he wrote, "The Lieut. Governor, in advocating the continuance of the system, was actuated solely by a conscientious conviction that the prosperity of the Colony was dependent in great measure upon the supply of labour thus annually placed at the disposal of the colonists." He regretted that the question had placed him "in opposition to the feelings and wishes of the majority of the Council", and rejoiced that the cause of disagreement had been removed. He was anxious to co-operate with the Council, "by promoting the introduction of an adequate number of free immigrants, to relieve the pressure on the labour market." (65)

Much time was taken up during the session of 1853 in discussion of schemes to further free immigration. The lead was taken on this question by Anstey. But some of the obstacles in the way of implementing the scheme recommended by the Select Committee of the Council in the previous session were shown when Newcastle reported

(63) Newcastle to Denison, 7/2/53. (64) The despatches are marked as being received on 27/4/53: Pakington's despatch was published in the Hobart Town Gazette on 3/5/53. They were tabled in the Legislative Council accompanying Messages 1 & 2 dated 12/7/53.

(65) Denison's Message No. 1 dated 12/7/53.

to Denison that the Land and Emigration Commissioners in England found the scheme unworkable.(66)

New committees of Council went into the question, working in close co-operation with the Lieut. Governor. To their request for female immigrants Newcastle had replied that only Irish women were available. The Colonial Agent still insisted that English and Scotch women could be sent,(67) but the Committee, with great reluctance accepted the decision that their earlier scheme was unpracticable, and advised the Lieut. Governor to seek the adoption of the scheme that obtained in New South Wales.(68) On the last day of the Session the 6th October, the Council heard the Lieut. Governor's message referring to the report of the Committee. Believing that the objections raised by the Secretary of State were based on a misconception, he was resolved, he said, to place before Newcastle the advantages of the Council's scheme compared with that of New South Wales. "I shall urge," he added, "upon Her Majesty's Government the expediency of forwarding without delay immigrants to the full extent of the funds at the disposal of the Land and Emigration Commissioners, as the demand for labour in this colony is too urgent to admit of the delay which continued references as to the details of a particular scheme would occasion."(69) The vigour thus displayed by Denison before the Home Government, together with his obvious willingness to co-operate on a major question of policy, did much to impress all

(66) Newcastle to Denison, 4/5/53: Denison's Message No. 23, V. & P. 20/9/53.

(67) Half-Yearly Returns of the Immigration Agent, Paper 47, V. & P. Papers, 1853. The seriousness of the position is revealed in the figures for immigration in the second half of 1852. The total was 220, of whom 71 were children, and 56 wives and families of transported offenders. (68) Report of the Select Committee of the Legislative Council appointed 20/9/53. Paper No. 30, V. & P. 1853.

but the most intractable of his opponents in the Council with both his good sense and the honesty of his intentions.

The improvement in the relations between the Executive and Legislature was nowhere more in evidence than in the handling of financial business. At the very beginning of the year the Council had, somewhat grudgingly, approved the estimates for the Departments of Police and Gaols till 31st March. At that time the imminence of a dissolution was openly discussed. In March the Council was willing to approve similar estimates only to cover the next quarter. But when the next regular session was convened in July, it was obvious that the attitude of most members of Council had been affected by the recent important decisions on transportation. The annual estimates were presented in a message from the Lieut. Governor. It spoke of "the flourishing state of the revenue", which he felt would not fall short of the estimate of £208,293. The principal increase was in 'customs' duties, but receipts of the Land Fund reached the figure of £90,000. It was possible therefore to sanction an increase in the salaries of all public servants.

Most strikingly did the Lieut. Governor urge the importance of an increase in the remuneration of schoolmasters, who were receiving "on an average, not more than that which a good day labourer would earn". "A very great increase," he added, "must be made to their emoluments before it can be hoped that properly qualified schoolmasters will be induced to devote themselves to the irksome task of tuition." "Education, to be successful, must be carried out on a

most liberal system: the future character of a people will depend very much upon the nature of the institution at which children are trained. It is a full conviction of this which induced the Lieut. Governor to suggest that the payment of schoolmasters should be chargeable to some fund less fluctuating in its character and with fewer claims upon it, than the General Revenue."(70)

The enunciation of such broad liberal principles evoked a ready response in the Council, which showed unusual readiness to vote supplies for the purposes outlined. It readily acceded to the request to pay the Colonial Agent a substantial salary, and showed renewed interest in the completion of the long interrupted building of Government House. In fact, the only reminder during discussions on finance of ancient grudges was when Allison intrepidly pursued the British Government, protesting against its demand for £60,000 as debt owed by the Colony.

It would wrong to suggest that the session of 1853 was marked by accord. It is true, of course, that most members showed more moderation in their attitude toward the Executive. But some of the older ones had long and bitter memories, so that not in all instances did personal dislike and mistrust die away with cessation. The affair of Chapman and Turnbull was too recent for it to be easily forgotten. During the months of recess Denison and his opponents waited impatiently for the Secretary of State's decision on that matter. Denison was confident that his action would be upheld his opponents hoped that it would not.

An answer eventually arrived from Newcastle some time before the opening of the Legislative Council. The Secretary of State stated at once that "Chapman justly merited removal from office". The circumstances of his acceptance of the office were irrelevant. If such conduct was to be condoned "the position of a Governor would be devoid of authority and consideration", and it would be impossible "to calculate beforehand on the support which his policy would receive, or to manage with any steadiness the affairs of ~~the~~ his Government".

Then Newcastle mildly reproved Denison for giving Chapman leave of absence without suspending him formally on the advice of the Executive Council. By this he had "cast on the Secretary of State the responsibility, not of confirming the act of a Governor and his Council, but of initiating the necessary act himself". Moreover, while he admitted that Denison's recommendation of Chapman's further employment under the Crown merited attention, he condemned the form in which it had been made. It should have been treated as a separate matter and not made "part of the sentence which you pronounce". As he had then no sentence to confirm and could neither remove Chapman without trial nor reinstate him, he directed Denison to bring the case in the usual manner before the Executive Council.

As for Turnbull, whether he "sat in right of his office or no he was not justified in using the vote against the Government which he served". Accordingly Newcastle confirmed his suspension the Clerkship. But he held that Turnbull's official position on

the Caveat Board was not "essentially connected either with his Clerkship or with his seat in the Council. It was rather an office not, strictly speaking, judicial but partaking of that character". He ordered therefore the reinstatement of Turnbull.(71)

But old grudges were not altogether forgotten. The Turnbull-Chapman affair still rankled in the minds of a number of the opposition. Quite early in the session of 1853, Chapman, member for Hobart Town asked for the tabling of a number of despatches, including those relating to the suspension of the two officers.(72) When acceding to this request Denison reminded the Council that it was "not customary to lay before the Council copies of despatches which relate to questions upon which the final decision of the Secretary of State has not yet been communicated2.(73) The correspondence was tabled and on the very same day Adam Turnbull petitioned to be heard before the Council. Chapman's motion that Turnbull should be heard was carried by 14votes to 9. Turnbull accordingly stated his case before the members.

By this time, however, the case no longer held public interest. But this did not deter Denison's most rabid opponents from an attempt to win the final round. Led by H. S. Chapman, all but one of the elective members put their signatures to an address to the Secretary of State in which they disclaimed any knowledge of the late Colonial Secretary having made known his opinions on

(71) Newcastle to Denison, 22/2/53.

(72)V. & P. 14/7/53.

(73)V. & P. 19/8/53.

transportation to the "opposition".(74) On the following day, Gregson asked the Colonial Secretary, whether the memorandum and the resolutions prepared by Turnbull in his defence had been considered by the Executive Council, and forwarded to the Secretary of State. To this Champ replied, "The Executive Council is a Privy Council: it is not customary to make the proceedings of that Council public."(75)

Not to be dissuaded from a course he had set himself, Gregson returned to the attack two days later. Pursuant to notice, he moved the adoption of a lengthy address, which recapitulated the course of proceedings taken by the Lieut. Governor against Turnbull and the various points disputed by them. In this he gave expression to certain ideas of constitutional propriety, which, while earning the disapprobation of a strong minority within the Council, served to elicit from the Lieut. Governor his interpretation of the proper relations between the executive and legislative organs of government.

One passage in Gregson's indictment needs to be quoted at length. It reads: "The trial of any member of the government for anything done by him in the House in the exercise of that discretion which he undoubtedly possesses under the constitution of this House, and for which he can alone be tried upon charges in this House, if indeed anywhere, cannot be considered as otherwise than highly derogatory to the necessary privilege of this Council and is even an interference of the Executive Government with that freedom of

(74) V. & P. 20/9/53.

(75) V. & P. 21/9/53.

(76) V. & P. 22/9/53.

(77) V. & P. 23/9/53.

speech and vote without which this Council must cease to possess the confidence of the Colony." This meant that Turnbull was answerable, for anything he had done in Council, to the Council and to no other body; an opinion which was dissented from by ten members, including the elective members, Dunn and Clerke. But his Address was carried by two votes.(76)

Denison's reply to the Address left no doubts as to his conception of his own position. It ran: "The Address appears to me to be founded upon an entire misconception of the position occupied by the Officers of the Government holding seats ex-officio in the Legislative Council. These gentlemen sit there as exponents of the policy of the Government: should any of them be disposed to object to the course pursued by the Government with relation to questions of importance, it is obvious that they can no longer perform the duty for which they were placed in the Council; and they would, as a matter of course, be removed from office, and therefore cease to sit as Members of the Legislature. Were they appointed by name, they would be removed from office, and be bound in honour to resign their seats." In short, while showing willingness to work in correspondence with the views of the Council, and always respecting its privileges, the Lieut. Governor declared that it had no legitimate right to interfere with the prerogative of Her Majesty, or to intrude upon the jurisdiction of the Executive of the Colony.(77)

Just one week later the Council was prorogued until the following March. The date marks the end of those differences

(76) V. & P. 23/9/53.

(77) V. & P. 29/9/53.

between the Lieut. Governor and the Council arising out of the affair of Chapman and Turnbull. But before turning to another subject of difference it may be well to summarise the implications of that affair.

When one considers the difficulties met with in England in adapting the constitution to the needs of the generation that followed the Reform Act of 1832, particularly in relation to cabinet making in face of a House of Commons that did not regularly know decisive majorities, it is not surprising that there was some confusion in the minds of some of those political leaders in Tasmania, who thought seriously about the conflict between the Executive and the Legislature in the Colony. But there can be no doubt that, when Gregson claimed that the Council had the sole power to deal with members for acts committed within it, he was giving expression to a doctrine that was entirely foreign to British constitutional practice. From its dim medieval beginnings, Parliament depended on the Crown; initiative within it rested normally with the Crown; more often than not its proceedings were dominated by Ministers of the Crown, and those ministers themselves could be dispensed with; and finally Parliament itself could be dissolved, if the Crown thought fit to dissolve it. Such was the theory and indeed up to this time, the practice of the British Constitution. No one doubted that these fundamentals had been transferred to those British Colonies overseas, where representative institutions had been set up. Dehison was certainly right in asserting that Government officers must support the policy of the Government

within the Legislative Council, and that, when they found they could not, their duty was to resign. Unfortunately for him this proper course was just what Chapman and Turnbull elected to follow. That they were not permitted to do so was his fault, and his action, whatever its motives may have been, did add to the prevailing mental confusion. By temporizing he increased his own difficulties, and put the Secretary of State into a difficult position. Nor was the principle of government for which he was contending made clearer by the fact that ~~he~~ allowed Francis Smith, the Solicitor-General, to follow his conscience on an important line of policy and vote against the Government. Denison's argument that the position of the Colonial Secretary differed from that of the Solicitor-General on this point, though useful to him for the time being, was quite spurious. If Turnbull was expected to support Government policy because he was Clerk of the Executive Council, then it was reasonable to expect the Solicitor-General to do at least as much.

The truth is that the crisis came unforeseen upon Denison, whose perception of all the issues involved was not immediately clear. His first concern was to maintain the unity of the administration in face of the opposition on the issue of Transportation. He thought that the differences could be removed by a carefully drafted resolution. The most important thing was to act collectively. In acting thus he was supporting a principle of the utmost significance for the future. What he was demanding was that the administration must stand or fall collectively before

the Legislature, and in taking such a strong line he brought into highlight a principle of government that was to prove readily acceptable to all, and indeed necessary to the working of the new constitution three years later.

For already moves were being made to alter the existing constitution, which to many had been from the beginning regarded as merely temporary. During his differences with Denison, Chapman had maintained that the crux of the matter was that transportation and representative government could not exist together. From the context it is not made clear whether he meant that they were mutually exclusive in all circumstances or just in the circumstances then prevailing in the Colony. It may be argued that, if the Crown could not, when it so wished, dominate the proceedings of the Council, then to carry on the government was impossible. Chapman probably thought that, with a blended house so constituted, it was impossible to carry on against such an "Opposition". At least some of the opposition had to be won over. He knew the price and was prepared to pay it. In other words, either transportation or representative government had to go.

To be sure of its position the Government had to be able to count on the votes of five of the sixteen elective members. Following the elections of 1851, during which the Anti-Transportation League called the tune, the Government had no hope of getting such support. But Denison was convinced that, with judicious handling, the Colonial Secretary could do something to win over the moderates. He condemned Chapman for having failed to do this. By the session

of 1853, he felt certain that the trend of opinion was in his favour. It may therefore be asked why, if he sought a working majority, - which Chapman had failed to get for him and which that officer maintained was impossible while transportation continued to be the policy of the government, - did he not dissolve, and rely on the change in the opinion of the electorate to answer his need. It is impossible to be sure. Probably his decision was determined by a number of questionings. Could he really be certain of securing a majority? Would not an election at a time when relations between Executive and Legislature were so embittered bring into the open a conflict between the opinions of the colonists and the policy of the Imperial Government, a thing to be avoided at all costs? After all, time was in his favour. Already the power of the opposition junts was on the wane, as had been revealed by the election of Alexander Clerke to the seat of William Archer despite the opposition of the 'Longford clique'. Or perhaps he was persuaded just to hang on, knowing that his term of office was soon to expire, and that a move elsewhere was being considered for him. Whatever his motives, he did not dissolve, and the "blended house" was to remain constituted as before, except where altered by death or retirement, and to tackle the next great question of the day - the alteration of the constitution.

Meanwhile the old issue was dead. On 29th December 1853, the Queen in Council revoked the Order of 1848 under which Van Diemen's Land became the penal colony in Australia.(78)

(78)The Order in Council, dated 4/9/48 was revoked on 29/12/53.
Newcastle to Denison 6/1/54: received 10/3/54.

Chapter VI.

The Adoption of Bicameralism

One of the axioms of constitutional thought in mid-Victorian England was that a legislature must consist of two chambers. The first chamber, or lowerhouse, represented the people at large; the second chamber had, as its most important function, the duty of reviewing the work of the other chamber, and of seeing that it did not, through excess of zeal, rashness or undue haste, make laws that were contrary to the considered opinion of the country.

It may be fairly said that in the Australian colonies in the 1850's this was a dominant idea in the minds of those who set about framing the new constitutions. It received its clearest expression in the actions and speeches of W. C. Wentworth. It appealed specially to those Victorians who sensed danger in the democratic spirit that spread among the gold diggers. It had its champions among the gentleman farmers of Van Diemen's Land who, having indulged in a little rabble-rousing on the transportation issue to make things difficult for the Lieut. Governor, were not sorry to see many of the more vigorous and intractable characters leave the Colony for the diggings. Their departure created an acute labour shortage, but it made it possible for this class to stabilise its political power. The instrument for the exercise of such power was a second or upper chamber.

Among Denison's first instructions received from Grey was a request for information concerning the establishment of representative

institutions in the Colony.(1) For some months no move was made because of the uncertainty of the composition of the Legislative Council following Wilmot's conflict with the "Patriotic Six". In his address to the Legislative Council on the 27th July 1847, the Lieut. Governor called for an enquiry into the means of establishing representative institutions, while ensuring "the retention by the Executive of a sufficient power of control over the convict population".(2) During the next month news arrived of the decision of Her Majesty's Government to abolish transportation. In consequence Denison was able to argue that Van Diemen's Land could have institutions similar to those of New South Wales.(3)

The question of representative institutions was brought before the Executive Council for the first time on 5th August. It was there and then decided to proceed by way of a detailed examination of the Imperial Act 5 & 6 Vic. c 76 relating to the government of New South Wales. A full discussion took place at the meeting of the Council on October 9th and the New South Wales Legislative Council was accepted as the model with certain reservations.(4) .

No further steps were taken pending a reply to Denison's opinions on the subject summarised in a dispatch to Grey early in October 1847. For the next few months Denison's attention was distracted by a conflict between the Executive and the Supreme Court. Not until early in the next year was he in a position to call the Legislative

(1) Grey to Denison, 20/10/46.

(2) Legislative Council, V. & P. 27/7/47.

(3) Denison to Grey, 20/8/47.

(4) Executive Council Minutes, 9/9/47.

Council. But his experience with this Council during the session of 1843 was anything but satisfactory to him and there seems reason to believe that it led him to attempt to persuade Lord Grey that "under the peculiar circumstances of these colonies" the adoption of a second chamber was desirable. By 'peculiar circumstances' he meant "the low estimate that is place upon everything that can distinguish a man from his fellows with the sole exception of wealth"; or "the broad plain of equality, as in America"; or again "an essentially democratic spirit which actuates a large mass of the country". Such circumstances, he argued, called for a second chamber. The composition or constitutional position of such a chamber he hesitated to examine. It was situated somewhere between the executive and elected house. It was to be independent of the government which was to "have as little as possible to do in the nomination and selection of the members." It was "to conciliate popular feeling" and it was to perform a moral function. Its members were to sit for life.(5)

The long expected Act designed to empower the Australian Colonies to establish representative institutions was delayed in the House of Commons. When he heard that the Bill had been withdrawn owing to the lateness of the session, Denison gave expression to his own opinions which had matured during the previous two years. The Committee of the Privy Council, while accepting the principle of an Upper House, had decided that it should not be applied in

(5) Denison to Grey, 15/8/48.

the Australian Colonies where the single chamber in N.S.W. provided a good model. Denison had his doubts whether this decision had been made on sufficient evidence. The indifference of the people on the question of a second chamber proved nothing. Besides it was extremely difficult, if not impossible, to gauge public opinion. Recent events in the New South Wales Legislature had, in fact, convinced him of "the tendency of a single Legislative Body to struggle for the possession of the Executive Power". Nor did he think that a single body would ever amend the constitution to form two chambers. To do so would be to diminish its own powers. He strongly advocated, therefore, "that a second chamber should be constituted at once by authority of Parliament". He preferred not to imitate the examples set in the North American Colonies, "inasmuch as a large proportion of the members should be elected, or otherwise rendered independent of the government and they should hold their position for a long period if not for life".(6)

On this last point, it is interesting to note that Denison's view was shared by Lord Elgin, who thought that an elected Upper House, in Canada, "would be a greater check on ill-considered legislation than the Council as it is now constituted".(7) But Grey to whom he was writing took a different view. His attitude to colonial policy was on most points determined by those progressive Whig principles that had been associated with Durham. His distrust of abstract ideas, had been reinforced recently by what had happened

(6) Denison to Grey, 28/12/49.

(7) Elgin to Grey, 23/3/50; the Elgin-Grey papers, Vol 2 p.613 (Public Archives of Canada 1937)

in France and other parts of Europe, so that he could write to Denison, "how much more enduring are those forms of government which are the gradual results of successive improvements dictated by circumstances and experience!"

Grey replied to Denison in a masterly despatch dated 11th April 1850. While respecting his judgment he found himself unable to agree upon the question of a second chamber. For the first principle was that an institution should accord with "the wishes and feelings of those for whose benefit they are intended". In view of the fact that no information had been given to show that the people in the Colony desired such an institution it would be unwise to proceed to establish one. Such a second chamber would be "a new and untried form of constitution the nature of which you do not ~~ass~~ explain in any detail" and, as if to give point to this vagueness, Grey reminded Denison that no provision had been made under his scheme for a deadlock between the houses.

Political wisdom therefore dictated that the bill which had been introduced should be proceeded with and he had every confidence that it would meet the "peculiar circumstances" of the Australian Colonies. "The principle on which this bill proceeds is that of making the smallest amount of change which is practicable by the authority of Parliament in the system of government now existing, leaving all further changes to be worked out as circumstances and experience may dictate by the colonists themselves subject to the approbation of the Crown and Parliament." If therefore public opinion at a later date sought the desired division into two houses

he anticipated no real difficulty in effecting an alteration of the constitution.(8)

The Act 13 & 14 Vict.c 59 "for the better governing of the Australian Colonies" came into Denison's hands on Jan. 31st 1851. During the next eight months he and his executive officers made preparations to carry out the provisions of the act in the Colony. The division into constituencies, the fixing of franchise qualifications, the supervision of the electoral machinery were some of the problems which occupied the attention of the Lieut. Governor and deepened the differences that already separated him from some members of the Legislative Council. The first elections took place in October and November and resulted in a victory for the anti-transportation party. The Lieut. Governor opened the new blended Council on the last day of the year and with this the constitutional struggle entered another phase.

For more than a year political controversy inside the blended Council and in the columns of the press turned upon the question of abolition. Denison's opponents in the Council, the most inveterate of whom was Gregson, were convinced that the Lieut. Governor continued to support the transportation policy in private and confidential despatches to the Secretart of State. The changeable and dilatory policy of the Colonial Office persuaded some of these that little could be expected from Whitehall unless severe pressure was put on the colonial government. Conscious of its

(8)Grey to Denison, 11/4/50.

voting strength the opposition touched the government on its weakest spot. It tampered with estimates and withheld supply. After Sharland's resolution condemning transportation had been passed, the Council agreed only after hesitation to grant supply to pay civil servants.(9) Government measures, some of which, like the Education Bill, were necessary, were wrecked by the intransigence of Denison's opponents, who were prepared to talk abolition or nothing.(10) Gregson pursued the Lieut. Governor with a hatred that could be satisfied only by Denison's removal from office. The openly avowed partisan character given to all business transacted in the Council led to increasing and more vicious attacks on the nominee system,(11) until the desire grew strong in the opposition led by T. D. Chapman, Gregson, and Kermode, to bring about the end of that system by a change in the constitution of the Colony. Already there were examples to follow. For as early as June 1852 the New South Wales Legislative Council had set up a Select Committee to amend the constitution and its report was issued in the following September. Though the constitution bills were withdrawn in December, the arrival of the dispatches from Pakington and Newcastle in the next year made the matter of a new constitution of first importance not merely in New South Wales but in Victoria and South Australia.(12) The very doubts cast in these dispatches upon whether Van Diemen's Land was not peculiar in its circumstances and therefore not fitted for such

(9)V. & P. 1852.

(10) *ibid.*

(11) Examiner, 8/10/53: for an account of the clash between Langdon and Gregson.

(12) C. H. B. E. VLI 185 ff.

concessions, were sufficient to cause a political fever in Hobart, Chapman, one of the members for Hobart, moved that a select committee should be appointed forthwith to draft a new constitution and to report on or before the last day of the session.(13)

The select committee, which was chosen by ballot, consisted of ten members, two only of whom, the Colonial Secretary, Champ, and the Attorney-General, Fleming, were nominees. Of the others, three, namely Dry, Fenton, and Gregson had been members of the "Patriotic Six" who had resigned their seats in the Legislative Council eight years before when opposing Lieut. Governor Wilmot.(14)

The political attitude of the gentleman farmers, who formed the majority of the elected members, was conditioned by the economic and social interests of their class. They had more often than not the interests of the Colony ^{sincerely} ~~xxxxxx~~ at heart, but they were too ready to assume that the interests of the Colony coincided with the interests of their class. Though the opposition of most to Denison did not run to the length of suspicion and hatred as with Kermode and Gregson, they were not prepared to recognise the constructive work and energetic administration of the Lieut. Governor.

(13) V. & P. 19/8/53.

(14) Dry, who was speaker in the Council, owned 24,000 acres of the best land in the Launceston basin between the South Esk and Meander Rivers. Fenton resided at "Fenton Forest" and owned 7,000 acres in the district of New Norfolk on the rivers Derwent, Styx and Falls. Gregson had an estate of 7,000 acres at "Risdon" in the parishes of Forbes and Clarence. Other members of the committee were J. W. Gleadow R. W. Nutt(Hobart), J. Cox who held 6,000 acres at 'Clarendon' in the Launceston basin. H. F. Anstey of Otlands and T. D. Chapman, merchant of Hobart Town who was prime mover.

Their political outlook was limited by their experience. They had become accustomed to looking at government through the eyes of an opposition. Yet this experience as an opposition was not without its usefulness. They emerged from this period of factious opposition a seasoned troop of parliamentary warriors, well versed in the arts of debate and in the tactical use of rules of procedure. The debates of these years contain frequent references to *May on Procedure*, and though the business of the Council was frequently held up by deliberate obstructionist tactics the respect for rules and standing orders was being developed at a time when parliamentary institutions in the Colony were in their infancy. By such means the machinery and indeed the spirit of the House of Commons were carried from the Mother Country to the other end of the world by men, who were conscious of the tradition they had inherited and proud of the model, from which they departed only through necessity and always with regret. Theirs was no mean achievement. If the procedural rules of the chamber reflected the spirit of an opposition, this is just what it had been in the House of Commons from the days of Peter Wentworth to those of John Pym. Had they been asked in the early '50's what exactly it was they wanted, they would most likely have replied, "Responsible Government". But if they were clear that a change was taking place in the relations between the Executive and Legislature, few, if any, understood the implications of the change.

The Select Committee set up to draft the new constitution reported on the 28th September 1853.(15) Early in the following week

Chapman moved a number of resolutions aiming at the introduction of a Constitution Bill in the next session. The resolutions embodied principles that were acceptable to a majority of the committee. The first provided for two houses under the new constitution. Others gave the Lieut. Governor power to prorogue both houses, but to dissolve only the Lower House; declared that twelve members would constitute the Upper House; set the franchise for elections to that House on the basis of £25 per annum freehold; made the whole Colony one constituency for those elections, and arranged that members of the Upper House should sit for six years. On the other hand, the Lower House or House of Assembly was to consist of thirty members, elected on the franchise (with minor modifications) laid down by the Imperial Act of 1850, and all bills for raising or appropriating revenue were to originate in this House. The most striking of these resolutions however, were the second, which provided that the Lieut. Governor could be removed upon an address carried by two thirds of both Houses; and the twelfth, which attempted to list the powers reserved to Her Majesty. These resolutions may be taken to exemplify the furthest point reached by the political thought of the 'opposition' in this generation. A radical departure from the form and principles of the British Constitution was the proposal to make the Upper House elective. But even this had been advocated by Denison as long ago as 1848. In recommending it, however, Chapman and his friends were striking at the nominee system which they detested.(16)

The reasons for the decision were set out at some length in the report. It recognised that there existed no analogy between the House of Lords and the Upper House in a Colony. A peerage could not be created, and, if it could, "it would be wrong in principle and destructive of the best interests of society, to vest in a privileged and irresponsible class those powers which are inherent in the people." As if to reiterate the doctrine of popular sovereignty it laid down that the framing must be in accordance with the wants and wishes of the people, "the legitimate source of all power". No better evidence to support the elective principle could be found than what had happened in Canada, where the Upper House had become "an engine of oppression and obstructiveness", and had done much to bring about a separation of the Colony from the Mother Country.

But if in places the report revealed a spirit of Benthamite radicalism, it did not break free from the dominant idea that a second chamber must be created to put a check on hasty legislation. For it took care that "the conservative element of the Constitution will be well secured by vesting the franchise in a body almost universally and instinctively opposed to innovation in a dangerous form". And further to this end it urged that the Upper House should be chosen from one electoral district. (17)

The debate which followed was one of the most memorable in the history of the 'blended' Council. The voting strength of the opposition had recently been weakened by the death of Joseph Archer, member for Longford, and the 'defection' of his successor, Alexander

Clerke. However, on the division, the resolutions were carried by eleven votes against nine. It was the signal not for the end but for the beginning of a political battle that was to be waged furiously for more than a year. No sooner had Chapman's resolutions been carried than William Race Allison, a nominee member, moved that the membership of the Council should be increased to thirty six before further consideration of the question of constitutional change, "in order that the feelings of the colonists thereupon may be more extensively expressed, and the new, rapidly increasing and varied interests of the country more fully represented".

The debate which ensued was waged bitterly. Gregson made use of some very strong remarks on the nominee system, which drew Captain Langdon to his feet to defend the name of the Lieut. Governor and to refute the charge that the nominees had no independent judgment. He indulged in expressions at the expense of Gregson, for which he was called upon to apologise to the member for Richmond. Allison in support of his motion, stated that certain districts, in particular the Huon, Mersey and Swansea, had increased in population since the election of 1851 and were virtually unrepresented. The people argued, should be consulted, the resolutions just passed were much too hasty, and his move was to put an end to "the close borough system" or "family compact" of those who wished to keep all the power in their own hands. Gregson in reply, saw in it only a move to increase the number of nominees, and hinted that the whole idea had originated "from another quarter". And he added that heartburnings

would cease soon with the arrival of a new Governor. When the vote was finally taken Walker crossed the floor and voted with the ayes. For the first time in the history of the Council, the Speaker, Dry, had to give the casting vote. After a lengthy reasoned statement on the importance of avoiding delay, he negatived the motion because "to pass this resolution would be an impediment to the new constitution", (18)

During the summer recess the controversy that had been aroused by Chapman's resolutions and Allison's motion to extend the number of representatives, was not allowed to die down, but was kept alive by the Press, particularly in face of two or three bye-elections. By July 1852 Denison was so assured of his growing popularity that he could write that of the seven papers in the Colony, four were by then on his side. (19) The Hobart Town Advertiser was wholeheartedly on his side and gave much time and space to editorial warfare against the opposition press. Throughout the first half of 1854 this journal tried to educate its public and its opponents in the niceties of English constitutional practice. The Mercury's line also was in general to support the Government, while in Launceston the Cornwall Chronicle countered the influence of the Examiner whose editorial opinions were frankly radical and whose vituperative pen was regularly devoted to attacks upon the nominee system. The bitterest opposition to government policy came, however, from the Courier and the Colonial Times.

(18) V. & P. 4/10/53.

(19) Denison, Varieties of Vice-Regal Life, Vol 1 p.193.

The scarcely concealed target of many of these attacks was the Lieut. Governor himself, whose name was associated with the continuance of transportation. "Denison and the degradation of Australia are eternally linked together." (20) Both the Examiner and the Courier toyed frequently with the catchwords "Responsible Government". Indeed the Courier understood by it the responsibility of the Lieut. Governor. Hence its strident advocacy of Chapman's second resolution to the effect that the Lieut. Governor should under the new constitution be made removable upon an address carried by two thirds of both houses. In fact the Courier argued that, as the British Parliament had and could change the succession, the Colonial Parliament should be empowered to remove the Lieut. Governor. (21) In reply, the Hobart Town Advertiser questioned this history and doubted the analogy. There followed an editorial argument upon what exactly happened at the English Revolution of 1688. Far from changing the succession, the Advertiser argued, Parliament simply declared the throne vacant, because it was vacant. "They announced a fact, not made it!" (22) On the subject of representation the Examiner, which revealed from time to time a marked interest in American institutions, declared that "population is the only sound basis on which representation can rest", and advocated that before any new constitution was drafted a convention directly elected by the people should be called. (23) Again the advertiser

(20) Launceston Examiner, 14/1/54, quoting Melbourne Argus.

(21) Hobart Courier, 1/6/54.

(22) Hobart Town Advertiser, 3/6/54, 16/6/54, 19/7/54, 20/7/54.

(23) Examiner, 2/3/54, 9/3/54.

countered by declaring it insincere and futile to call the colonists "highly educated" and "full of public spirit". But the Examiner repeatedly pointed out the existing inequalities of representation to the special disadvantage of Launceston, whose one member, Richard Dry, had by his casting vote defeated the motion in favour of extension. For this last act Dry was not forgiven by either the Examiner or the Cornwall Chronicle.(24)

It was on this question of extension that the Advertiser directed a strong campaign during the summer recess to induce the rival candidates at the bye-elections to pledge themselves in advance in its support. Both Dr. Officer and Dr. Butler, who won the Buckingham and Brighton seats, made the pledge. In like manner the Cornwall Chronicle assailed the "Longford clique" that, it alleged, were intriguing against the member, Clerke, who had become an avowed champion of extension. Some months later following the retirement of Cox, member for Morven, it turned upon Anstey and his clique who had questioned the credentials of the new member, Sinclair.(25)

The rival forces which had been taking each other's measure during the recess clashed at the very opening of the new session in April 1854. Clerke at once presented a series of petitions from the citizens of Longford, Westbury, the Mersey district and Circular Head seeking an extension of representation of the Colony.(26) The 'opposition' found fault with these petitions and held up all further discussion of the question of extension for some weeks by referring

(24) Cornwall Chronicle, 2/9/54.

(25) Cornwall Chronicle, 23/8/54.

(26) V. & P. 19/4/54.

the petitions to a committee of enquiry. When the Council resumed late in July obstruction took the form of an enquiry into the credentials of the newly elected member for Morven. By this time, however, it had become obvious that the old guard could no longer count upon a majority. To them the 'defection' of Clerke had caused the first serious rift in their solid front. The two new members, Officer and Butler, had shown no inclination to vote as a principle against the nominees. Moreover, both had pledged themselves before election to support extension. When the majority overrode the claims of the veteran Gleadow and made Officer Chairman of Committees, the 'old guard' had clearly lost the initiative. Their clumsy attempt to oust Sinclair from the Council only served to strengthen the hands of the other party. (27)

By the last week in September when Clerke introduced his Extension Bill tempers had become frayed. It was carried on the first reading by twelve against nine. Among the majority were to be found Sinclair, Sharland and Officer. (28) The next day the bill passed the second reading and was referred to a Select Committee. It reported a week later. On the very same day the Select Committee that had been sitting since April to prepare the draft of a Constitution Bill issued its report, and the bill was read a first time. (29) It was now an open question which bill would pass first through all stages.

But before these last stages were reached two elements in the situation call for some notice. The report of the Committee on the

(27) V. & P. 22/8/54, 25/8/54, when Chapman was ordered into the custody of the Sergeant at Arms.

(28) V. & P. 20/9/54.

(29) V. & P. 29/9/54.

Constitution Bill was carefully studied and held by most to compare favourably with the report made by a similar committee in the previous year. It was indeed a sober document. Though part of the report showed a remarkably liberal outlook, the tone was essentially conservative. Not the slightest suspicion of separatist or republican tendencies was in evidence. No attempt for instance was made - as had been made in the previous year - to define the limits of the Crown. Without trying to elaborate upon the notion of sovereignty the report ran, "We claim full management of our own affairs as inhabitants of this colony; but as subjects of the Queen, and as members of the Empire at large, we acknowledge the necessity of Imperial control over matters of Imperial cognizance." On the controversial question of responsible government no conclusion was reached. Following the experience of the Mother Country it was decided that, "the remedy is not one of enactment, but of practice." Further it was acknowledged that the choice of public officers was purely a matter of prerogative.

The principle of a bicameral legislature had by this time obtained such widespread acceptance, that the committee, without feeling the need to recommend it proceeded at once to suggest practical measures towards its realisation. A franchise for the lower house was proposed which "is of such easy acquisition by the industrious classes as to be practically universal". For membership to that house there should be no property qualification. This followed, it said, "the Scotch rather than the English analogy". The report then concerned itself with an Upper House "designed to be a conservative break upon hasty legislation". To achieve this

it recommended that members should have attained the age of at least thirty, be possessed of real property, and be chosen by a constituency of freeholders for a period longer than that for which members of the Lower House were elected. On this last point it was thought that the Upper House would function better if it had "a permanent, indissoluble and continuing ~~xxxxxx~~ character", by requiring that one third of the members should retire at fixed intervals. Further there was some difference of opinion concerning the size of the constituencies. Some favoured four constituencies, others preferred that the whole state should form one constituency, but the majority held that there should be roughly half the number of constituencies that sent members to the Lower House. By having more constituencies it was argued that the predominance of the town over the country would be very much reduced and this was a desirable end for almost all members of the committee.

The report summed up the recommendations by stating that, if adopted, they would achieve as perfect a balance as possible between the twin forces upon which all political action depends. "The instincts of the assembly will be movement- progress - innovation; generally, it is hoped, of a useful character, but nevertheless subject to the defect incidental even to improvement when suddenly introduced. The instincts of the more conservative body will be caution - deliberation - resistance to change if not fairly and fully proved to be beneficial."(30)

At this juncture the Lieut. Governor thought fit to intervene by revealing his own attitude to constitutional change and, in particular, to a Second Chamber. His ideas were embodied in official correspondence with the Secretary of State and in a private letter to the Speaker of the Council.

In a dispatch to Newcastle in February, Denison had tried to explain the state of feelings in the Colony on the subject of a new constitution. Newcastle had previously argued that "the peculiar circumstances of the colony must, for some time, continue to produce marked features of political differences from those exhibited by the provinces on the neighbouring continent". But he added, "they are not sufficient to affect the principles though they may modify the application." Did this mean that constitutional change in this colony was not to be considered by the Colonial Office for the time being? Denison denied that the differences really existed, and concluded that the principles of responsible government should be applied at once in Van Diemen's Land as in the other colonies. But a second chamber was essential. It should not consist of persons appointed because their opinions coincided with those of the Executive, but at the same time it ought to be free from "any direct or immediate dependence upon the popular will." If Denison's early experiences had taught him to fear the worst from the dilatory and prevaricating officials of the Colonial Office, he was reassured when he received a dispatch from Sir George Grey, Newcastle's successor, who said that, provided that the Upper House

were not immediately subject to "popular impulse" and were able to act as "a salutary check upon hasty legislation", it was not necessary to insist that it should be nominated by the Crown. He added a warning, based upon the experience he had recently had in vetoing certain sections of the Constitution Bills forwarded by the other colonies. Care should be taken to see that the provisions of any Constitution Act were within the powers possessed by the Colonial Legislatures. The warning was transmitted by Denison in a message to the Council.(31)

If in writing to Newcastle in February, Denison had said, "I did not attach much importance to the mode of election," he certainly had decided views on the matter, when two months later he addressed himself to the Speaker, Richard Dry. In this letter he recalled that he had advocated to Lord Grey in 1848 and again in 1849 the need for an elective/^{second} chamber. Such a chamber would, he thought, give security against hasty and class legislation and against collisions between legislature and executive. He wanted the property qualification of the electors to be such as to make the Upper Chamber representative not of a class, but of the property and intellect of the colony. His idea of voting procedure was peculiar. To avoid undue excitement and all canvassing, that would detract from the dignity of the chamber, he recommended that the whole colony should be treated as one constituency, and all who were on the electoral roll should nominate one person for membership of the chamber.

(31)V. & P. 1854. Paper no.72, containing the despatches: Denison to Newcastle, 14/2/54 and Grey to Denison, 2/8/54.

The twelve or fifteen who were so nominated by the greatest number of electors would be declared elected. No property qualification was to exist to bar any manx from being chosen in this way.(32)

The final round of the protracted constitutional controversy opened in the last week of October. On Monday the Extension Bill was read a third time and passed. It redefined the boundaries of Westbury, Oatlands, established the new electoral divisions of Glamorgan and Wellington, and gave an additional member each to Hobart Town, Launceston, Cornwall and Buckingham. Thereby it provided for an increase from 24 to 33 in the membership of the Legislative Council. Of the nine new members, three were, of course, to be non-elective.

The Constitution Bill in its turn was debated at length in committee on Wednesday and Thursday and again on the following Monday. On Tuesday, the last day of the month, the bill was read a third time and passed. The bill in its final form embodied substantially the recommendations of the Select Committee.

And so ended a political battle that had aroused the rival organs of the Press at times to a pitch of fury, caused many breaches in social relations, and gone far to prejudice the constructive work of the executive departments. The Colony could ill afford the discord at a time when its economy was being undermined.

Both sides claimed the victory. Allison and Clerke, on the one hand, could say that the principle of extension had been

approved before the Constitution Bill had passed. On the other hand, Chapman and Gregson could argue that constitutional reform had been achieved in the face of the opposition of the Executive, and that in future the composition and duration of the Upper House would be beyond the Executive's power to influence. Both sides misjudged the other. The opposition of Gregson and his friends did not arise merely from personal rancour or from a desire to protect the vested interests of a clique. At the same time Denison showed more care for the interests of the Colony and was more ready to do battle with the Colonial Office on its behalf than the opposition were ready or able to believe.

The Constitutional Bill was forwarded to the Secretary of State. It ^{was} confirmed by an order in Council(33) and proclaimed in the Colony in the following year(1856). Among the last business of the old (blended) Council was the making of arrangements for elections to the House of Assembly and the Legislative Council under the new constitution. These elections took place in the spring, and the Two chamber Parliament of Tasmania met for the first time on December 2nd 1856.

(33) Russell to Young, 4/5/55.

APPENDIX

THE COLONIAL SECRETARY'S OFFICIAL FILES

The records of the Colonial Secretary's Office are arranged in series under the name of each Lieut. Governor. They are not catalogued, but Register Books list the various file numbers for each period in consecutive order, while the Index Books arrange the matter under subject heads, and indicate the number of the volume containing any file. The first records date from Arthur's time. Previous records have been either destroyed or removed. The Arthur series (1824-1836) contains files running from 1 to 19184. The Franklin series (Jan. 1837 - July 1841) runs from 1 to 7780. For the rest of Franklin's and throughout Wilmot's period the records are in three series - Legal branch (L.B.), Civil branch (C.B.) and Records branch (R). Each series has its own Register and Index Books. With Denison the records are once again kept in a single series. These files are numbered 1 to 10914 and are bound in volumes one to 295 and cover the period April 1847 to Jan. 1855. There are eight Register Books and a Two Volume Index. The records of Lieut. Governor's following Denison are each prefixed with the name of the Lieut. Governor. They continue to the present day.

BIBLIOGRAPHY

I Manuscripts

1. The Despatches, being official correspondence between the Lieut. Governors and the Colonial Office.
2. The Minutes of the Executive Council of Van Diemen's Land.
3. The Colonial Secretary's files, containing all correspondence, inter-departmental and other, coming into and going out of the Colonial Secretary's Office. These files are the chief source of material for any administrative history.
4. The Diary of G. T.W.B. Boyes, Colonial Auditor (this is in the library of the Royal Society of Tasmania).

II Printed Materials

1. Votes and Proceedings of the Legislative Council of Van Diemen's Land.
2. Papers of the Legislative Council.
3. The Historical Records of Tasmania.
4. Newspapers: in particular, Hobart Town Gazette, Hobart Town Advertiser, Hobart Town Courier, Colonial Times, Launceston Examiner, Cornwall Chronicle, the Mercury.
5. Writings on Tasmanian History:
 - John West The History of Tasmania.
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